

Decision 90 02 041 FEB 23 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the operations,  
rates and practices of Frank C.  
Alegre Trucking, Inc. and Kaiser  
Cement Corporation, Lone Star  
Industries, Calmat Co., Calaveras  
Cement, Granite Construction,  
Nevada Cement Company, and Blue  
Circle West Cement, and order to  
show cause.

ORIGINAL

I.88-04-065  
(Filed April 27, 1988)

Edward J. Hegarty, Attorney at Law, for  
Frank C. Alegre Trucking, Inc.,  
respondent.

Ellis Ross Anderson, Attorney at Law, for  
E. F. Mitchler, Inc.; John Dayak, for  
Amaral Trucking, Inc.; Gary E. Haas,  
for Dolo-Chem Transport, Inc. and  
Grimsley Trucking, Inc.; Stan Kody,  
for RMC Lonestar; Priscilla Ladeira,  
for Rich Ladeira Trucking, Inc.;  
Julie A. Mc Knight and D. J. Reynolds,  
for Kaiser Cement Corporation; Silver,  
Rosen, Fischer & Stecher, by John Paul  
Fischer, Attorney at Law, for Les  
Calkins Trucking, Inc. and Frank E.  
Hicks Trucking, Inc.; Richard W.  
Smith, Attorney at Law, for California  
Trucking Association; Shirley Tibbs,  
for Foothill Bulk Transport, Inc.; and  
D. G. Redlingshafer, for himself;  
interested parties.

Lawrence O. Garcia, Attorney at Law, and  
William Waldorf, for the  
Transportation Division.

O P I N I O N

Background

On April 27, 1988, the Commission issued Order Instituting Investigation (I.) 88-04-065 on its own motion into the operations, rates, charges, and practices of Frank C. Alegre Trucking, Inc. (Alegre) and seven bulk shippers of cement. Alegre whose mailing address is 802 North Cluff Road, Lodi, California 95240 is in the business of transporting property over the public highways of California for compensation. Alegre holds a cement carrier certificate, a highway contract carrier permit, a highway common carrier certificate, a dump truck carrier permit, a heavy specialized carrier permit, and an agricultural carrier permit.

In this proceeding it is alleged by protestant Senator Bulk Transport, Inc., formerly Frank E. Hicks, Trucking, Inc. (Senator), interested party Les Calkins Trucking, Inc. (Calkins), and the Commission's Transportation Division staff (Transportation Division) that respondent Alegre has violated Public Utilities (PU) Code §§ 452, 452.1, and 494 by failing to collect the correct rates and charges as provided for in Alegre's tariff on shipments of cement for the seven respondent shippers. Senator and Calkins assert that, in effect Alegre has applied unauthorized reduced rates to place his "...entire dry cement transportation operation in an extremely favored position vis-a-vis the operation of all other cement carriers in Northern California." This according to Senator and Calkins goes far beyond the normal rate reduction procedure where, due to specific circumstances, the shipper and the operation can be identified.

Legislative History and General Order 150-A

Effective May 30, 1983, Alegre was authorized to apply less than the maximum reasonable rates for transportation of cement, as set forth in Item 250 of his Tariff No. 1. In 1984 after extensive hearings, the Legislature enacted AB 4033,

which established PU Code § 452.1. In response to this code revision, after similarly extensive hearings the Commission adopted General Order (GO) 150-A governing the transportation of cement and related commodities by cement carriers and cement contract carriers. (Decision (D.) 86-07-036, dated July 16, 1986 as modified by D.87-01-075, dated January 28, 1987; D.87-11-032 dated November 13, 1987.)

The thrust of PU Code § 452.1 and GO 150-A was to require cement carriers to apply maximum reasonable rates for all transportation of cement or alternatively require a showing that "the rate is fully compensatory based solely upon the cost of transportation from origin to destination and return and the projected revenue to be derived from the requested rate."

It appears that the intent of the legislation with regard to rates for cement transportation was to eliminate the use of any "backhaul revenues" as a justification for finding that a reduced rate is fully compensatory.

**Alegre's Cement Transportation Operations  
Leading to this Investigation**

The legality of Alegre's rates for transporting cement first came into question on July 27, 1987, following the issuance of D.86-07-036, as modified by D.87-01-075. Alegre asserts<sup>1</sup> that at that time he collected full tariff rates but segregated the monetary differential between the reduced tariff and full tariff rates for cement transportation while awaiting the disposition of his petition for rehearing of D.86-07-036. By D.87-11-032 the Commission extended the cancellation date of Alegre's reduced cement transportation rates to December 31, 1987.

Instead of applying his maximum reasonable rates, following the issuance and effectiveness of D.87-11-032, Alegre

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1 Alegre Brief (Br.) p. 2.

filed Application (A.) 87-12-052 with his supporting data for continuation of reduced rates on and after January 1, 1988.

On April 27, 1988 the Commission initiated this investigation. At its next regular meeting on May 11, 1988 the Commission issued an order (D.88-05-033) directing Alegre to cease and desist from charging cement rates other than maximum reasonable rates, unless and until the Commission issued a further order authorizing different rates.

The Commission also concluded that:

- "2. To the extent that cement rates now being charged and solicited for by Frank Alegre Trucking, Inc. are not maximum reasonable rates, said carrier is in violation of this Commission's orders in D.87-01-075 as modified by D.87-11-032." (D.88-05-033, Conclusion of Law 2.)

Subsequently, the Commission has issued two orders in A.87-12-052. In D.89-04-083 (dated April 26, 1989), the Commission denied the application of Alegre for authority to establish cement rates less than the maximum reasonable rates. In D.89-09-053, dated September 7, 1989, the Commission issued its Order Denying Rehearing and Modifying D.89-04-083.

#### The Hearing Record

Four days of hearings were held on May 9, 1988, March 14, 1989, June 27, 1989, and August 7, 1989 respectively. The lapse of time between the first day of hearing and the subsequent days resulted from the Commission's issuance of an interim order to show cause and cease and desist order on May 11, 1988, while the Commission further considered Alegre's still pending A.87-12-052 seeking approval of the proposed reduced rates for transporting cement.

Testimony in this matter was given by five witnesses, one for Alegre and four for the Transportation Division. Seventeen exhibits were received and hearings were concluded on August 17, 1989. This investigation was submitted upon receipt of concurrent

briefs, on a date certain, 30 days following the date of the Commission's order on Alegre's request for rehearing of D.89-04-083 in A.87-12-052. On September 7, 1989 the Commission issued D.89-09-053 denying rehearing and modifying D.89-04-083. Thus concurrent briefs were due and were received from the parties and the matter was submitted on October 10, 1989. The modifications of D.89-04-083 by D.89-09-053 related primarily to the treatment of stem miles and did not authorize any reduction in Alegre's rates for transporting cement as sought by Alegre in A.87-12-052.

Summary of the Record

The historical events prior to January 1, 1988 are already summarized above and need not be discussed further since the main issue before the Commission now is the difference between the applicable maximum tariff rates and the rates collected by Alegre for transportation of cement from respondent shippers during the period of January 1, to May 11, 1988.

Accordingly, during the March 14, 1989 hearing the assigned Administrative Law Judge directed Alegre to review its billing records for the period of January 1, 1988 to May 11, 1988 to calculate the difference between the applicable maximum rates and the rates assessed by Alegre during this period. Alegre made this calculation from its billing records and, in addition, it calculated the rate that would have been charged had the Rate Reduction 1305 rates, which were in effect on December 31, 1987, been used as the correct rates. These calculations were evidenced in Alegre's Exhibit 13 (as corrected by Exhibit 15) and in Transportation Division's Exhibit 14, as modified during the hearing.

It is the Transportation Division's as well as Senator's and Calkin's positions that Alegre should be ordered to collect undercharges for the full differential between the maximum reasonable cement rates and the rates Alegre assessed pursuant to

A.87-12-052, and that Alegre also should be subject to "appropriate fines" for violation of PU Code §§ 452, 452.1, and 494.

Under Transportation Division's methodology the parties agree that billing undercharges totalling \$66,598.63 exist. However, Alegre argues that, should the Commission find that Alegre was still entitled to charge the rates contained in Rate Reduction 1305 because it filed a timely cost justification of those rates within the intent of D.87-11-032, the undercharge would total \$50,472.09 (Exhibit 14 as amended).

The Punitive Fine Issue

The parties differ on the punitive fine to be imposed upon Alegre for willful undercharges as compared to the maximum reasonable tariff rate.

a. Alegre's Position

Alegre contends that having filed timely cost justification of the reduced rates in A.87-11-032 no penalty fines or undercharges should apply, since "...neither Alegre nor the respondent shippers of cement was aware of the violation until the Commission issued its D.88-05-033 (on May 11, 1988) and the violation was not willful."<sup>2</sup> Alternatively it argues that Alegre should only be required to assess undercharges in the amount of \$66,598.63 if the Commission deems it necessary for Alegre to fulfill its statutory obligation under PU Code § 2100. In addition, if the Commission makes such alternative determination, Alegre asks that it be given 60 days to demonstrate that respondent shippers actually paid transportation charges in excess of Alegre's

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2 (Alegre Br. p. 15.) Also, at page 8 of its brief, Alegre states that its goal was to provide the lowest reasonable cement transportation rate for cement shippers while all other carriers were content with assessing the maximum reasonable rate. It seems patently unfair to Alegre that simply because it took the initiative to file rates to provide reasonable cost, as opposed to maximum cost transportation, it should now pay a fine.

billings. Thereby Alegre maintains that any undercharges paid by respondent shippers should be adjusted to reflect contemporaneous overpayments by them. (Alegre Br. pp. 8-16.)

b. Transportation Division's Position

The Transportation Division recommends that Alegre be directed to collect undercharges of \$66,598.63 from the respondent shippers and pay that amount to the Commission as a fine under PU Code § 2100. In addition the Transportation Division recommends that Alegre be directed to pay a fine of \$5,000 pursuant to PU Code § 1070, arguing that the Commission has historically imposed such fines in cases such as this. It supports its statement with a list of four recent decisions imposing such fines. Transportation Division asserts that under PU Code § 1070, \$5,000 is the maximum fine for a first offense and \$20,000 is the maximum for a second or succeeding offense. Based on Alegre's record, the Transportation Division did not elect to pursue the concept that each day constitutes a separate offense.

Lastly, the Transportation Division states that Alegre still has Rate Reduction 1305 Item 250 in its tariffs, (Tr. p. 161) and since that item has been cancelled, Alegre should be directed to expunge it from its tariffs. (Transportation Division Br. p. 7.)

c. Senator and Calkin's Position

Senator and Calkin's argue that there is no contested issue regarding the fact that Alegre placed reduced rates into effect without the required rate justification and authorization from the Commission. They also state that Alegre could not justify the reduced rate and the Commission rejected Alegre's showing.

Senator and Calkins agree with computation of the undercharges by Alegre in the amount of \$66,598.63 for the respondent shippers.

Senator and Calkins also assert that:

"The only real issue that must be determined in this proceeding is the punitive fine to be

levied pursuant to Section 1070 of the Public Utilities Code. The factors that enter the determination of the punitive fine are:

1. The level of fine authorized by the Code Section;
2. The acts of the respondent that gave rise to the violation; and
3. The willfulness of the respondent in continuing the violation." ((1961) 58 Cal. PUC 462.)

"In this particular case, each day of operation was a separate and distinct offense and thus a second or succeeding offense under Section 1070 of the Public Utilities Code. (See Public Utilities Code Sections 1070 and 2108.) The respondent here is not a small carrier that was unaware of a technicality in the law. To the contrary, the respondent had actively participated in the proceeding that gave rise to the adoption of General Order 150-A. Its rate reduction 1503 (sic) was one of those that was the subject of the Commission's order to rejustify its existing Rate Reduction 1305 by December 31, 1987, or revoke the tariff page. In the face of all of this, Alegre chose not only to put reduced rates into effect, but to be absolutely blatant in the following:

1. Although making a claim that the rates were really the same as Rate Reduction 1305, they differed from Rate Reduction 1305 as follows:
  - a) Rate Reduction 1305 was a specific point-to-point rate applying to only four origin points, while the rates put into effect here were mileage rates applying to all origin points in the northern territory and many more than the 45 origin-destination pairs found in Rate Reduction 1305.
  - b) The rates adopted were not justified as required by Decision 89-04-083.



- c) Even today, Alegre has not removed the Rate Reduction 1305 rates from its tariff.
2. The respondent has enjoyed nearly a million and a half dollars in revenue, some substantial portion diverted from the rest of the cement transportation industry.
  3. It has cost the Commission and the other parties a substantial amount of time and money to finally bring this matter to a point of decision.
  4. It should be remembered that the undercharge fine does not actually come out of the carrier's pocket, but rather the pockets of the shippers.
  5. A fine of a mere \$5,000.00 measured against a 4-1/2-month period generating \$1,403,255.95 in revenue sounds ridiculous, and is ridiculous. The shippers are being assessed between 5% and 8% of the amount that they paid under the rate reduction. Alegre should suffer the same additional punitive fine as a minimum, (i.e. 5% to 8% of the gross revenues that went into the Alegre coffers and stayed there which would be a punitive fine of between \$65,000.00 to \$124,000.00)." (Senator and Calkins Br., pp. 7-9.)

Senator and Calkins also argue that:

"The imposition of a punitive fine at the level proposed here will be opposed on the ground that it would adversely affect the carrier. But what are punitive fines supposed to be for, if not to impose a significant adverse penalty on the wrongdoer? A \$5,000.00 fine will, for all intents and purposes, be nothing more than a slap on the wrist. The carrier respondent here knew exactly what it was doing when it chose to put an extended reduced rate structure into effect. The rates simply were not those in effect under Rate Reduction 1305. The structure was different, the application was different, and, last but not least, they could not be justified by the carrier. Something

more than a slap on the wrist is not only justified, it is required." (Senator and Calkins Br., p. 9.)

Discussion

We have two issues to consider here, (1) the amount of undercharges to be collected and remitted to the Commission and (2) the appropriate level of fines which should be levied upon Alegre based on the record evidence.

On the amount of the undercharges, the parties agree that without continuation of reduced rates after December 31, 1987, the amount of the undercharges is \$66,598.63 to be collected from the respondent shippers as follows:

Kaiser Cement Corp.	\$33,932.07
Lone Star Industries	\$23,550.14
Calaveras Cement Co.	\$ 4,817.41
Blue Circle West Cement	\$ 166.12
Nevada Cement Co.	\$ 1,728.38
Granite Construction	\$ 2,404.51

It is clear that D.87-11-032 dated November 13, 1987 terminated the effectiveness of Alegre's reduced rates on December 31, 1987. Thereafter, any application of the reduced rates by Alegre was without prior authorization of this Commission and a clear violation of PU Code § 452.1 and GO 150-A. There was no provision in the order for a retroactive justification of the reduced rates. The cost justification, if approved, is prospective only. We will therefore direct Alegre to collect the specified amounts from the respondent shippers and remit the total of \$66,598.63 to the Commission.

The claim of Alegre's counsel that the respondent shippers had deposited (banked) amounts in excess of billings with Alegre is clearly not "evidence" in this matter. Alegre's counsel states this fact as well, at page 10 of his brief.

In addition, the mere existence of any deposits by respondent shippers with Alegre, in excess of billings to them, raises more questions and issues than are answered or resolved.

Alegre and the respondent shippers had ample opportunity to advance evidence and arguments concerning the intended use of such deposits during the hearings, but did not do so. It is enough to say that what is important is the amount of Alegre's bills for the respondent shippers for the period in question. Therefore, there is no good reason to consider the existence of any such excess funds at this time.

Lastly on the issue of undercharges, we agree with Transportation Division that any remaining reference to Rate Reduction 1305, Item 250 in Alegre's tariff should be expunged and we will so direct.

Next, as to the appropriate amount of fine which should be levied upon Alegre, we have reviewed the four recent decisions referred to us by the Transportation Division in Appendix A of its brief (see also Appendix A hereto). The four referenced decisions follow stipulated settlements by the parties in those proceedings. Beyond collection and remittance of undercharges to the Commission ranging from \$7,274.21 to \$43,505.79 the stipulated settlements often included fines to both the primary and/or affiliated carrier and/or the respondent shipper or debtor as follows:

1. D.89-02-047, February 24, 1989 Re  
I.88-04-066 Northern Refrigerated  
Transportation, Inc. (Ceres)

Undercharges	\$7,274.21
Primary Carrier Fine	\$2,500.00
Affiliated Carrier Fine	\$1,250.00

2. D.89-04-067, April 26, 1989 Re I.88-05-010  
Boyd Trucking Company (Cottonwood)

Undercharges	\$43,505.79
Primary Carrier Fine	\$ 5,000.00
Respondent Debtor Fine	\$ 4,000.00

3. D.89-04-067, April 26, 1989 Re I.88-10-023  
NFI, Inc. of California (Stockton)

Undercharges	\$27,232.20
Primary Carrier Fine	\$ 2,500.00
Respondent Shipper Fine	\$ 1,500.00

4. D.89-05-015, May 10, 1989 Re I.88-12-026  
Otto Terkildsen, Inc. (Oakdale)

Undercharges	\$7,511.39
Primary Carrier Fine	\$3,500.00

All of the above examples involve lesser undercharges than are involved in this case (\$66,598.63) and yet include greater than proportional fines based on the magnitude of undercharges involved when compared to the Transportation Division's recommended \$5,000.00 fine for Alegre. In fact in D.89-04-067 (Boyd Trucking Company) we adopted stipulated fines totalling \$9,000.00 against Boyd Trucking Company and Bohemia, Inc., on undercharges of \$43,505.79, fully \$23,092.84 less than the undercharges involved in shipments by Alegre in this proceeding.

Accordingly we will direct Alegre to pay the maximum first offense fine of \$5,000.00 to the Commission pursuant to PU Code § 1070.

The reasonableness of this maximum fine is further demonstrated by review of D.83-06-102 dated June 29, 1983 in I.82-03-01 wherein LVJ Leasing, Inc. was directed to pay a fine of \$2,000.00 on undercharges of \$1,600.64, and D.93647 dated October 20, 1981 in OII 47 wherein Newman Trucking Company, Inc. was directed to pay a fine of \$2,500.00 on undercharges of \$19,347.42. Those fines represented dollars worth considerably more in 1983 and 1981 respectively than dollars used by Alegre to pay the \$5,000.00 fine today.

We recognize that a \$5,000.00 fine on shipments yielding total revenues of \$1,403,255.95 is small and that by merely paying the undercharges the respondent shippers are no worse off than had

they paid the maximum reasonable rates at the outset. However, Alegre will not benefit by the undercharges to be collected from the respondent shippers and remitted to the Commission in the amount of \$66,598.63 nor will Alegre enjoy any substantial benefit from his long and costly involvement in either A.87-12-052 or I.88-04-065.

Comments: ALJ's Proposed Decision

In accordance with PU Code § 311 the ALJ draft decision prepared by ALJ George Amaroli was issued on December 26, 1989. Timely comments on the proposed decision were filed by Senator, Calkins, and the Transportation Division.

Alegre, who had not filed comments, did file a timely "Reply Comments" as permitted by Rule 77.5 of the Commission's Rules of Practice and Procedure.

All of the comments and Alegre's reply have been carefully considered by the Commission, and we are of the opinion that the ALJ's proposed decision constitutes a fair, factual, and thorough resolution of the remaining issues in this proceeding. Therefore, we will adopt the ALJ proposed decision without changes to the results reached therein.

Findings of Fact

1. Alegre holds a cement carrier certificate, a highway contract carrier permit, a highway common carrier certificate, a tank truck carrier permit, a dump truck carrier permit, a heavy specialized carrier permit, and an agricultural carrier permit.

2. Alegre had in its tariffs, prior to December 31, 1987, an effective Rate Reduction 1305, Item 250 applicable to transportation of cement.

3. Rate Reduction 1305, Item 250 was canceled on December 31, 1987 by D.87-11-032 dated November 13, 1987.

4. Alegre filed A.87-12-052 on December 28, 1987 intending to reestablish cement carrier rates at less than the maximum reasonable rates set forth in its then effective Item 205.

5. On January 1, 1988 Alegre began applying the reduced rates it had requested in A.87-12-052 even though those rates had not been authorized by the Commission.

6. On April 27, 1988 the Commission commenced this investigation into the operations, rates, and practices of Alegre and the respondent cement company shippers who then utilized Alegre's transportation services.

7. By D.88-05-033 the Commission ordered Alegre to cease and desist collecting the reduced cement rates it had been charging since January 1, 1988.

8. On April 26, 1989 the Commission issued D.89-04-083 denying Alegre's A.87-12-052 requesting authority for reduced rates for hauling cement.

9. Thereafter Alegre applied for rehearing of D.89-04-083 and the Commission issued D.89-09-053 on September 7, 1989 denying rehearing.

10. Senator and Calkins' assertion that Alegre enjoyed nearly \$1,500,000 in revenue with some substantial portion diverted from the rest of the cement transportation industry, as a result of billing its services at unauthorized, reduced rates, has merit.

11. All parties agree that Alegre's maximum reasonable rate during the period January 1, 1988 to date is Item 205 in its filed tariff.

12. An audit by the carrier as directed by the presiding Administrative Law Judge disclosed that Alegre has undercharged respondent shippers a total of \$66,598.63 during the period of January 1, through May 11, 1988.

13. Respondent shippers have underpaid Alegre the following amounts of the \$66,598.63 total:

Kaiser Cement Corp.	\$33,932.07
Lone Star Industries	\$23,550.14
Calaveras Cement Co.	\$ 4,817.41
Blue Circle West Cement	\$ 166.12
Nevada Cement Co.	\$ 1,728.38
Granite Construction	\$ 2,404.51

Conclusions of Law

1. Alegre has violated PU Code §§ 452, 452.1, and 494 by failing to assess respondent shippers the applicable rates and charges set forth in Item 205 of its filed tariffs during the period of January 1, through May 11, 1988.

2. Alegre should be ordered to collect undercharges in the amount of \$66,598.63 for the period January 1, 1988 to May 11, 1988 from respondent shippers as follows:

Kaiser Cement Corp.	\$33,932.07
Lone Star Industries	\$23,550.14
Calaveras Cement Co.	\$ 4,817.41
Blue Circle West Cement	\$ 166.12
Nevada Cement Co.	\$ 1,728.38
Granite Construction	\$ 2,404.51

3. Alegre should be fined in the amount of collected undercharges pursuant to PU Code § 2100.

4. Alegre should be required to pay a punitive fine in the amount of \$5,000 pursuant to the provisions of PU Code § 1070.

5. Alegre should be ordered to cancel and remove Rate Reduction 1305 Item 250 from its Tariff No. 1, Cal. PUC 1.

6. Alegre should be ordered to cease and desist from future violations of the PU Code and the Commission's rules and regulations.

7. This investigation should be discontinued when Alegre has complied with the ordering paragraphs below.

O R D E R

IT IS ORDERED that:

1. Frank C. Alegre Trucking, Inc. (Alegre) shall collect undercharges totaling \$66,598.63 from respondent shippers in the amounts set forth as follows and remit such amounts to the Commission as a fine within 10 days after the effective date of this order:

Kaiser Cement Corporation	\$33,932.07
Lone Star Industries	\$23,550.14
Calaveras Cement Company	\$ 4,817.41
Blue Circle West Cement	\$ 166.12
Nevada Cement Company	\$ 1,728.38
Granite Construction	\$ 2,404.51

2. Alegre shall pay a punitive fine of \$5,000.00 to the Commission within 10 days after the effective date of this order.

3. Alegre is hereby directed to cancel and remove Rate Reduction 1305, Item 250 from its Tariff No. 1, Cal. PUC 1 within 10 days after the effective date of this order.

4. Alegre shall hereafter cease and desist from violating the Public Utilities Code and the Commission's rules and regulations.

5. This investigation shall be terminated when Alegre has fully complied with Ordering Paragraphs 1, 2, and 3 above. Counsel for Alegre is hereby directed to notify the Director of the Commission's Transportation Division of Alegre's full compliance with Ordering Paragraphs 1, 2, and 3 of this order and thereby request termination of this investigation as set forth herein.

This order becomes effective 30 days from today.

Dated FEB 23 1990, at San Francisco, California.

I will file a written concurring opinion.

/s/ G. MITCHELL WILK  
President

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

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

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NEAL J. SHULMAN, Executive Director



APPENDIX A \*

Decision 89-02-047 February 24, 1989

NORTHERN REFRIGERATED TRANSPORTATION, INC., Ceres

Violation: Carrier failed to assess the correct rates and charges as provided for in its common carrier tariff.

Decision Order: Respondent Northern Refrigerated ordered to pay a punitive fine of \$2,500.00 and to collect undercharges of \$7,274.21 and pay a fine in the same amount. Respondent Poppy State Express ordered to pay a punitive fine of \$1,250.00.

Decision 89-04-067 April 26, 1989

BOYD TRUCKING COMPANY, Cottonwood

Violation: Carrier failed to assess the correct rates and charges as provided for in its common carrier tariff.

Decision Order: Respondent Boyd ordered to pay a punitive fine of \$5,000.00 and to collect undercharges of \$43,505.79 and to pay a fine in the same amount. Respondent Bohemia, Inc. ordered to pay a shipper penalty fine of \$4,000.00.

Decision 89-04-071 April 26, 1989

NFI, INC. OF CALIFORNIA, Stockton

Violation: Carrier failed to assess the 10% rate increase ordered by Decision 86-04-045.

Decision Order: Respondent NFI ordered to pay a punitive fine of \$2,500.00 and to collect undercharges of \$27,232.20 and pay a fine in the same amount. Respondent Ownes-Corning Fiberglas ordered to pay a shipper penalty fine of \$1,500.00.

Decision 89-05-015 May 10, 1989

OTTO TERKILDTSEN, INC., Oakdale

Violations: Carrier conducted operations as a cement carrier without authority, failed to assess the applicable rates and charges on shipments of cement, and engaged subhaulers without having a subhaul bond on file with the Commission.

Decision Order: Respondent Terkildsen ordered to pay a punitive fine of \$3,500.00. Respondent Basalite Block Co. ordered to pay an undercharge fine of \$7,511.39.

(END OF APPENDIX A)

\* This same appendix was included as part of the Transportation Division brief.

I.88-04-065  
D.90-02- 041

G. MITCHELL WILK, Commissioner, concurring:

I am reluctantly voting for this decision because it represents the necessary enforcement of legislation regarding cement rates. However, it is bad law and should be repealed.

The Public Utilities Code contains a number of provisions expressly designed to limit entry into the cement carriage business and to limit competitive rate-setting among certificated carriers. There is simply no justification for requiring that the public bear the burden of paying artificially higher prices for cement to assure higher profits for cement carriers. Certificates of cement carrier authority reportedly sell for thousands of dollars per county; such prices clearly indicate that carriers are making excess profits due to these restrictions. The legislation which created these provisions smacks of the worst in special-interest actions.

I would encourage my colleagues to support repeal of sections of the Public Utilities Code that restrict entry into cement carriage and competitive pricing among cement carriers. The consumers of this state deserve nothing less.

  
G. MITCHELL WILK, Commissioner

February 23, 1990  
San Francisco, California