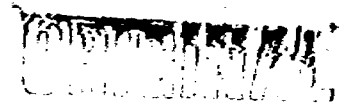


Decision 90 05 006 MAY 04 1990



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates, and practices of Robert C.
Perdelwitz, an individual, dba
F.M. Trucking, and five shippers
listed in Attachment A, as Shipper
Respondents,

Respondents.

I.89-07-010
(Filed July 6, 1989)

Robert C. Perdelwitz, for himself,
respondent.
Lawrence O. Garcia, Attorney at Law, and
William Waldorf, for the Transportation
Division.

O P I N I O N

Robert C. Perdelwitz, doing business as F.M. Trucking, (respondent FM) is engaged in the business of transporting property over the public highways of this state for compensation and operates pursuant to a highway contract carrier permit issued by this Commission on March 27, 1978.

The respondent shippers listed in Attachment A have received services from respondent FM in the form of transportation over the public highways of this state for compensation, and as such are shippers of property. It appears that respondent FM may have provided respondent shippers with transportation services over the public highways of this state for compensation at rates less than the applicable rates; and a staff investigation revealed that respondent FM may have violated the Public Utilities (PU) Code by operating without proper authority and by failing to assess and collect the applicable rates when transporting shipments for

respondent shippers. Accordingly, the Commission issued this Order Instituting Investigation (OII) to determine:

1. Whether respondent FM has violated Section 3737 of the PU Code by performing transportation services for the respondent shippers without having a contract on file and in effect with the Commission as required by Rule 6.1 of General Order (GO) 147-A.
2. Whether respondent FM has violated Section 3737 of the PU Code by engaging subhaulers who are not licensed by the Commission in violation of GO 102-H.
3. Whether respondent FM has violated Sections 3664, 3667, and 3737 of the PU Code, or any of those sections, by failing to charge respondent shippers the applicable rates.
4. Whether in the event that sums less than the applicable rates are found to have been charged, collected or received, a fine in the amount of the undercharges should be imposed upon respondent FM pursuant to Section 3800 of the PU Code.
5. Whether respondent FM should be ordered to collect from the respondent shippers the difference between the payments actually received and the applicable rates and charges pursuant to Section 3800 of the PU Code.
6. Whether any or all of respondent FM's operating authority should be cancelled, revoked, or suspended, or in the alternative, a fine imposed of up to \$20,000 pursuant to Section 3774 of the PU Code.
7. Whether respondent FM should be ordered to cease and desist from any and all unlawful operations and practices.
8. Whether any other orders that may be appropriate should be entered in the lawful exercise of the Commission's jurisdiction.

After service of the OII, 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 Robert C. Perdelwitz dba F.M. Trucking (FM) agrees to pay an amount to be deposited with the Public Utilities Commission ('Commission') in the sum of \$1,500 pursuant to Section 3774 of the Public Utilities Code. This amount is to be paid in three consecutive monthly installments of \$500 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 FM agrees to take all reasonable steps including legal action if necessary to collect undercharges in the amount of \$3,817.14 for the transportation of property for five shipper respondents in this proceeding and to pay a sum of \$3,817.14 to the Public Utilities Commission pursuant to Section 3800.

"3. Respondent FM and the Commission's Compliance and Enforcement Branch of the Transportation Division (Commission Staff) agree that the \$3,817.14 may be paid directly by the five shipper respondents to the Commission pursuant to Section 3800 of the Public Utilities Code in lieu of payment through Respondent FM as specified in Paragraph 2 above.

"4. It is hereby acknowledged that Respondent Arciero Brothers, Inc. (Arciero) has paid its share of the \$3,817.14 in the amount of \$357.45 directly to the Commission pursuant to Section 3800 of the Public

Utilities Code in lieu of payment through Respondent FM as specified in Paragraph 2 above.

"5. Respondent FM ratifies the payment of \$357.45 by Respondent Arciero to the Public Utilities Commission pursuant to Section 3800.

"6. The Commission staff further agrees that FM may pay the remaining balance of the undercharge amounts (\$3,459.69) as such undercharges are collected within ten (10) days of receipt. In the interim, the Commission Staff agrees that FM may pay \$3,459.69 to the Commission in seven consecutive monthly installments, the first six of which shall be in the amount of \$500 each and the seventh in the amount of \$459.69. The first installment shall be due 120 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.

"7. 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.89-07-010 be terminated, that all respondents in I.89-07-010 shall henceforth not be subject to any future undercharges, sanctions, or fines arising from transportation performed by FM for the shipper respondents 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.

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

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

Finding of Fact

The stipulation is reasonable and is approved.

Conclusions of Law

1. The stipulation should be adopted.

2. Respondent FM should pay a fine to the Commission of \$1,500 under PU Code § 3774 in three consecutive monthly installments of \$500 each.

3. Respondent FM shall take all reasonable steps to collect the undercharges and pay the money collected to the Commission pursuant to PU Code § 3800, as more specifically set out in the stipulation.

ORDER

IT IS ORDERED that:

1. The stipulation is approved and adopted.

2. Respondent FM should pay a fine to the Commission of \$1,500 under PU Code § 3774 in three consecutive monthly installments of \$500 each.

3. Respondent FM shall take all reasonable steps to collect the undercharges and pay the money collected to the Commission pursuant to PU Code § 3800, as more specifically set out in the stipulation.

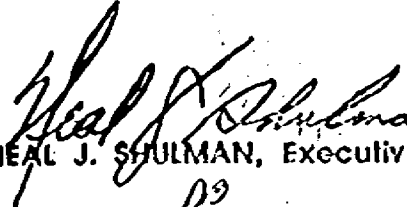
This order is effective today.

Dated MAY 04 1990, 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

- 5 -


NEAL J. SHULMAN, Executive Director
09