

Decision 90 07 029 JUL 6 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., a California)
corporation, and of Ghirardelli)
Liqueur Corporation, dba Ghirardelli)
Chocolate Co., a California corpora-)
tion, and of Westco Products, Inc.,)
dba Westco-Coast Dakota, a Califor-)
nia corporation.)

Application I.88-12-025
(Filed December 19, 1988)

ORIGINAL

Edward J. Hegarty, Attorney at Law, for
Frank C. Alegre Trucking, Inc. and
Corleto & Ackerman, by James D. Hearn,
Attorney at Law, for Westco Products, Inc.,
respondents.

Alberto Guerrero, Attorney at Law, and
William Waldorf, for the Transportation
Division.

O P I N I O N

Summary

Frank C. Alegre Trucking, Inc. (Alegre) transports property over the public highways for compensation under the following operating authorities issued by the Commission: Highway Common Carrier Certificate (1986); Cement Carrier Certificate (1976); Contract Carrier Permit (1981); Dump Truck Permit (1973); Heavy Specialized Permit (1980); Tank Truck Permit (1983); and Agricultural Carrier Permit (1987). The results of an investigation conducted by the Commission Transportation Division (TD) indicated that good cause existed to believe that Alegre had assessed rates and charges for transportation services provided to Ghirardelli Liqueur Corporation (Ghirardelli) and Westco Products Products, Inc. (Westco) which may have violated Public Utilities (PU) Code sections 494 and 702. Accordingly, on December 19, 1988,

the Commission instituted this investigation into Alegre's operations and practices to determine:

1. Whether Alegre violated PU Code ss 494 and 702 by failing to assess and collect the applicable rates for transportation of sugar for Ghirardelli and Westco as provided by Alegre's Local Freight Tariff No. 3.
2. Whether Alegre should be ordered to collect from Ghirardelli and Westco the difference between charges billed and collected and the applicable rates and charges.
3. Whether, in the event undercharges are found to exist, a fine in the amount of the undercharges should be imposed on Alegre pursuant to PU Code Section 2100.
4. Whether any or all of Alegre's operating authority should be cancelled, revoked, or suspended or, as an alternative, a fine should be imposed pursuant to PU Code Section 1070.
5. Whether Alegre should be ordered to cease and desist from any unlawful operations or practices.
6. Whether any other appropriate order or orders should be issued.

A copy of the order Instituting Investigation was duly served upon Alegre, Ghirardelli, and Westco. Hearing on the matter was set after TD's Compliance and Enforcement Branch notified the assigned Administrative Law Judge that settlement of the matter could not be reached.

Alegre, Westco, and TD appeared to present evidence at the hearing of this matter on August 1, 1989 in San Francisco. Ghirardelli did not appear. The matter was submitted upon the filing of concurrent briefs by TD, Alegre, and Westco on September 25, 1989.

The sole issue disputed at the hearing was the interpretation of Alegre's Local Freight Tariff No. 3 to determine which items in the tariff are applicable to the shipments of granulated sugar, in bulk, involved in this investigation. Under TD's interpretation of Alegre's Tariff, Items 508.3 and 2005, undercharges of \$2,297.37 and \$22,023.30 exist for the accounts of Ghirardelli and Westco, respectively. TD's total recommended undercharges are \$24,320.67. Alegre stipulated to the undercharges for Ghirardelli's account. Alegre's and Westco's interpretation of the same tariff items reviewed by TD and certain corrections of Alegre's billing errors, result in undercharges of \$601.98 for Westco. The total amount of undercharges recommended by Alegre and Westco is \$2,899.35.

TD addressed the imposition of a punitive fine in its concurrent closing brief. In addition to a fine in the amount of the undercharges, TD recommends that a punitive fine of \$4,000 be imposed upon Alegre.

In closing briefs, Alegre and Westco addressed the legal issues of burden of proof, sufficiency of the evidence, requirements for the imposition of a punitive fine, and ex parte contacts. Alegre and Westco argue that no punitive fine is warranted.

We find no dispute that TD bears the burden of proving the allegation of undercharges by a preponderance of the evidence. We find that TD has not carried this burden.

We find that TD's interpretation of Alegre's Tariff No. 3 is incorrect. We find that undercharges totaling \$2,899.35 exist against the accounts of Ghirardelli and Westco. We order Alegre to collect this amount and remit it to the Commission as a fine. We also impose a punitive fine of \$750.00.

Evidentiary Hearing

At the hearing, TD did not dispute that it bears the burden of proving undercharges alleged in this investigation. TD did not object to proceeding first, which is the order of proceeding for the party who has the burden of proof. TD's prima

facie case was the introduction of Exhibits 1-7 into evidence as Exhibits 1-7 by its qualified witness, a Supervising Rate Expert who holds a position of major responsibility with TD. No oral direct testimony was introduced.

In its briefs, Alegre and Westco summarize the case law regarding the burden of proof in enforcement proceedings. They argued that the evidence presented must be clear and convincing and beyond a reasonable doubt. Alegre points out that TD did not offer "direct testimony" in the hearing. TD did not address these issues in its brief.

There is no dispute that TD bears the burden of proof in enforcement proceedings and that the alleged undercharges must be proven by a preponderance of the evidence. However, the lack of oral direct testimony does not invalidate TD's prima facie case.

Written direct testimony is preferable in Commission proceedings. (Rules of Practice and Procedure, Rule 68). TD's Supervising Rate Expert was duly qualified and the proper foundation laid for the introduction of Exhibits 1-7. TD's written direct testimony appears in Exhibits 2 and 7. These exhibits contain statements summarizing TD's investigation and its rationale for the rating analysis contained in Exhibits 4 and 5. Exhibits 4 and 5 include footnotes which explain the items of Alegre's tariff used by TD in its rating analysis.

No party objected to the receipt of TD's exhibits 1-7. Alegre stipulated to the facts contained therein and its argument that no direct testimony was presented by TD is without merit.

Undisputed Facts

Exhibit 1 is a revised list of the freight bill numbers involved in this proceeding. Exhibit 2 contains a summary of TD's investigation of both shippers, copies of the freight bills referenced in Exhibit 1 and corresponding bills of lading, weightmaster certificates, and invoices for 65 shipments of sugar transported by Alegre for Ghirardelli during the period August 22 to November 30, 1987. Exhibit 3 contains copies of the same

documents for 72 shipments of granulated sugar transported by Alegre for Westco during the same time period.

Exhibits 2 and 3 show that the shipments were transported, billed, and invoiced to the shippers. Most of the Westco shipments were transported 191 constructive miles from Hamilton City to Union City, California. The applicable rates for these shipments is disputed. Fourteen of the Westco shipments and all of the Ghirardelli shipments were transported less than 60 constructive miles, from Tracy to Union City (Westco) or San Leandro (Ghirardelli). Alegre disputes the applicable surcharge for these shipments. Each shipment, including those transported 191 miles and those transported less than 60 miles, weighed over 50,000 pounds.

Exhibits 4 and 5 contain TD's ratings of the Ghirardelli and Westco shipments. Based upon these exhibits, TD requests that its rating analysis for each shipper be found correct and that Alegre be assessed undercharges of \$2,297.37 for Ghirardelli's account and \$22,023.30 for Westco's account.

Exhibit 6 contains selected items from Alegre's Tariff No. 3 of which TD requests official notice be taken. We grant Alegre's request to take official notice of Tariff No. 3 in its entirety.

Exhibit 7 is TD's memorandum in reply to Alegre's contentions in this proceeding and the basis of TD's tariff interpretation.

Exhibit 8 contains Alegre's calculations of undercharges in the amount \$601.98 for Westco based upon its interpretation of its tariff. This exhibit also includes calculations of operating ratios under Alegre and TD's rating methods which are intended to support Alegre's argument that the undercharges recommended by TD unreasonable.

The calculations contained in Exhibits 1-8 are not disputed.

Applicable Rates

PU Code S 494 requires the proper application of common carrier tariffs. This section provides that no common carrier shall charge, demand, collect, or receive a different compensation for the transportation of persons or property or for any service in connection therewith, than the applicable rates, fares, and charges specified in its schedules filed and in effect at the time. TD's witness, explained that the parties disagree on the proper interpretation of Items 508.3 and 2005 of Alegre's Local Freight Tariff No. 3.

1. TD's Position

TD applied the rates under Class 35 in Item 508.3 to the total weight in each shipment transported more than 60 constructive miles. TD contends that the rates in this item are applicable to shipments involved in this investigation because each shipment weighs more than 50,000 pounds. TD argues that Item 2005 applies only to shipments not exceeding 50,000 pounds.

TD adds to the Item 508.3 rates applicable surcharges.

TD argues that Alegre's rating method does not comply with Item 110 of National Motor Freight classification 100-N, incorporated by reference in Item 10 of Alegre's Tariff No. 3. Item 110 defines a shipment as "a lot of freight tendered to a carrier by one consignor at one place at one time for delivery to one consignee at one place on one bill of lading." TD asserts that each bill of lading shows that each shipment involved is a separate shipment.

TD alleges that Item 60 Alegre's Tariff No. 3 supports its position. Item 60 requires that: "Each shipment shall be rated separately. Shipments shall not be consolidated nor combined by the carrier." TD emphasizes the fact that this language is part of Alegre's own tariff.

TD asserts that a combination of the rates contained in Items 508.3 and 2005 cannot be used in combination to circumvent the weight restriction set forth in Item 2005. In TD's opinion, to do otherwise would make this provision meaningless. According to TD, Alegre improperly applied its commodity rate (Item 2005)

"Freight all Kinds", applicable to sugar for transportation which is subject to class rates (Item 508.3) which are higher. TD argues that Alegre's combination of rates is incorrect because Item 2005 does not apply to shipments weighing over 50,000 pounds.

TD considers Alegre's defense to the alleged undercharges, namely, the higher operating ratios and profit margins which would result from TD's rating methodology, to be irrelevant in an enforcement proceeding.

TD contends that Alegre's argument that its tariff is ambiguous and unclear is no defense to the charges herein because the carrier is responsible for proper application of its own tariff. TD takes the position that Alegre's tariff is applicable regardless of the rate quoted and agreed upon by the carrier and shipper.

2. Alegre/Westco Position

Alegre and Westco allege that tariff interpretation rules mandate that tariffs be given fair and reasonable construction with ambiguities or uncertainties in a tariff resolved against a public utility. Therefore, where one or more rates appear applicable, the shipper is entitled to the lowest rate (citing numerous cases and General Order (GO) 80-B, 6.7(g)).

Alegre's witness, Hays, admitted that Alegre combined the rates of Items 2005 and 508.3 to calculate its charges. Alegre argues that this combination of rates is proper. Alegre asserts that GO 80-B, Rule 6.7(g) requires that a carrier to assess the lowest charges to a shipper when more than one applies to the same service. In order to achieve the lowest rate, Alegre argues that it is proper to apply Item 2005 rates to the first 50,000 pounds of each shipment, and Item 508.3 rates to the remaining weight in each shipment.

Alegre contends that this methodology does not violate Item 10 or Item 60. Alegre points out that TD's admitted that Alegre combined rates, not shipments.

Alegre introduced a cost analysis to support the reasonableness of its rating method and the unreasonableness of TD's rating method. (Exh. 8). Alegre's tariff interpretation and

resulting rates produce a 92.6 operating ratio compared with 52 under TD's tariff interpretation. Alegre contends that this profit margin is excessive, therefore, TD's rating method is unreasonable.

Alegre agrees that the Central Coastal Surcharge in its tariff is applicable to the shipments. However, Alegre asserts that the 10% surcharge contained in Supplement 1 of its tariff is only applicable to rates in Item 2005.

3. Discussion

We agree in part with Alegre's premise that GO 80-B, Rule 6.7(g) applies to the transportation service in this proceeding.

Rule 6.7 (g) states that: "Whenever a class rate and a commodity rate are named between specified points, the lower of such rates is the lawful rate". There are no "specified points" named in Item 508.3 or 2005. The rates of both items are based upon mileage brackets.

Rule 6.7(g) continues: "In the event two or more rates are named in a tariff, tariffs, or schedules of the carrier for the same transportation, the lower shall apply." We agree that this portion of the rule applies to the shipments which were rated by Alegre under Items 508.3 and 2005 of its Local Freight No. 3.

Rule 6.7(g) concludes: "In the event that a combination of rates makes a lower aggregate through rate than a single rate, the lower combination shall apply. The carrier shall immediately publish the lower combination rate."

The explanation of an "aggregate through rate" is contained in PU Code 460:

"No common carrier subject to the provisions of this part shall charge or receive any greater compensation in the aggregate for the transportation of persons or of a like kind of property for a shorter than for a longer distance over the same line or route in the same direction, within this State, the shorter being included within the longer distance or charge any greater compensation as a through rate than the aggregate of the intermediate rates. This provision does not authorize any such common carrier to charge or receive as great a compensation for a shorter as for a longer distance or haul."

The undisputed facts in this proceeding do not involve a through rate and an aggregate of intermediate rates along the same route. Even though the applicable rate is disputed for shipments traveling 191 miles, there is agreement that these shipments traveled from Hamilton City to Union City. Shipments traveling less than 60 miles for which the applicable rate is undisputed move from Tracy to San Leandro and from Tracy to Union City. There is no evidence to support a conclusion that these points (Hamilton City, Tracy, Union City, and San Leandro) are along one Alegre service route. There is no evidence that these points are intermediate points on such a route. There is no evidence that Alegre publishes rates for service to and from intermediate points along this route, the aggregate of which produce a lesser charge than the through rate used by TD. Therefore, we reject the argument that the portion of Rule 6.7(g) which governs "aggregate through rate" has any application to shipments in this proceeding.

Item 60 contains two requirements: the separate rating of shipments and a prohibition against combining shipments. There is no evidence in the proceeding that supports TD's allegation that Alegre combined shipments in charging for the service to the shippers. The rating analyses contained in Exhibits 4, 5, and 8 show Alegre's total rate and charge assessed per shipment. Alegre's witness, Hays, admitted that Alegre combined the rates in Items 2005 and 508.3 to derive its charges, but did not combine shipments. With only TD's speculation to refute this statement, we must agree that Alegre combined rates, not shipments.

We find that Alegre's methodology is consistent with Item 60's requirement that each shipment be "rated separately" to mean applying one or more rates to the total or separate weights of the commodity(ies) which comprise a shipment without the addition of the weight of other separate and distinct shipments. This interpretation is fully confirmed by the definition of a shipment in Item 10. Alegre did not combine the weights of different shipments to determine applicable freight charges. Each shipment was rated based solely on their own separate weights. Alegre's methodology splits each shipment with two parts for rating

purposes. We find that this method is fully sanctioned and consistent with Item 60 which requires "Shipments To Be Rated Separately" and Items 90-91 which provides a "Mixed Shipments" mechanism for rating shipments which includes portions that are subject to different rates.

The rating methods provided by the Mixed Shipments rules requires different rates to be used to determine freight charges, based on the combined weight of the entire shipment, for the separate portions of the shipment where the use of this technique produces lower aggregate charges.

The mixed shipment rule uses the words *** "two or more commodities" ***. Obviously, the meaning of these words must be interpreted in terms the clear purpose of the rule. Where applicable, the rule grants shippers the benefits of the economies of scale enjoyed by the carrier which result from the tender of large amounts of freight as a single shipment. If this were not the case, the separate portions of a shipment would artificially be assessed higher charges based on the lower weights of each component.

The word "commodities" does not control application of the Mixed Shipment Rule. This word is descriptive and is used as a convenient means of reference to the critical factor - that the shipment contains freight which is subject to more than one rate. The word "commodities" encompasses synonyms such as portions, segments, parts, components or other words which are equally acceptable. We interpret the Mixed Shipment Rules to apply where two or more rates apply to a shipment whether or not it includes different commodities.

The unavoidable interpretation of the plain word of Item 90-91 allow and, in fact, requires the carrier to apply this methodology if it produces the lowest legal freight charges. Upon recalculation, Alegre precisely followed the rule. The weights of the separate portions which comprised the shipments are self evident. They were obtained by simply subtracting the maximum weight allowed by Item 2005 from the actual shipment weights.

As required by the "Mixed Shipments" rule, its use is conditioned upon the availability of different rates for the separate portions of the shipments. If, as contended by TD the rates in Item 2005 cannot be applied, no mixed shipments existed and the methodology use by TD to rate the freight as separate shipments is correct.

Alegre's Local Freight Tariff No. 3 conditions the use of the rates in Item 2005 with the following language: "MAXIMUM WEIGHT: 50,000 pounds per unit of equipment utilized."

The restriction against the use of Item 2005 as understood by TD cannot be inputed or interpreted on the basis of the exact meaning of these words and their plain and common use. Nowhere in that item or elsewhere in the tariff does language exist which expressly or implicitly denies the use of Item 2005 rates in mixed shipments weighing more than 50,000 pounds.

Item 2005 does not limit the amount of freight which can be tendered in a single shipment. It provides shippers with a choice based on their perception of their own best interests. If shippers decide to tender shipments which weigh more than 50,000 pounds, they must pay a premium for the overage under other provisions of the tariff. The fact that they may select that option does not deprive them of Item 2005 rates for 50,000 pounds of the shipments.

As an example of the flawed interpretation advocated by TD, we refer to Item 1026 of Alegre's tariff. This item also sets forth a rate for transportation of granulated sugar, in bulk, and is conditioned by the words "MAXIMUM WEIGHT: 50,000 pounds per unit of equipment". It also specifically includes a charge of "50 cwt" for any excess weight. If we were to accept TD's interpretation of Item 2005, we must rationally conclude that a shipment that exceeds the weight limitation cannot be rated under Item 1026 and must be assessed a class rate for the first 50,000 pounds and the 50 cwt charge for the balance. Clearly, this interpretation contradicts long established precedent which requires tariff interpretations to be fair and reasonable. (Consolidated Vultee Aircraft Corporation vs. AT & SF Ry. SD & AE

Ry., (46 Cal P.U.C. 147.)" Decision No. 69499, dated August 3, 1965, in case numbers 8092 and 8125, 64 Cal P.U.C. 590.)

We cannot accept TD's interpretation. The absence of a specific authorization for the use of a rate cannot be automatically and routinely converted into a prohibition. Unless clear and unequivocal tariff barriers exist, the carrier is required by well settled precedent, as embedded in our GO 80-B, to assess the lowest charges determined under the interaction of all of the applicable rates and rules in its tariff.

In defense of the methodology it used to apply its tariff, Alegre directs our attention to the requirement that if reasonable doubt exists the tariff must be interpreted in favor of the shipper. Our GO 80-B mandates this principal of law. We, however, do not believe it needs to be invoked in this decision. We believe, and so find, that a straight forward reading of the applicable tariff provisions does not reveal any ambiguities or uncertainties which are not susceptible to reasonable interpretation.

We agree that a carrier cannot apply a strained interpretation of its tariff. The Commission is no less bound by this requirement. Were we to accept TD's recommendation the result would be precisely one which TD condemns. The shipper would be denied the lowest legal rate as required by GO 80-B and would be required to pay much greater undercharges than actually exist.

In accordance with our finding that Alegre's properly interpreted Items 508.3 and 2005 of its tariff, we find that it correctly applied applicable surcharges.

In summary, we find that Alegre has violated PU Code Section 494. Alegre will be assessed a fine of \$2,899.35, the amount of the actual undercharges. This fine will be imposed to prevent unjust enrichment of Alegre. Alegre will be ordered to collect and remit this amount to the Commission.

Proceeding Record

In this proceeding, Alegre submitted information concerning the reasonableness of the rates which TD recommended be

applied. TD rebutted this presentation by reference to the Commission's program which allows carriers to file for reduced rates. This portion of the record will be disregarded.

The issue of rate reasonableness is not material to this proceeding. The Order Instituting Investigation by which it was established encompasses only the application of Alegre's tariff. Testimony and other evidence concerning rate setting procedures, profitability and rate reasonableness will not be considered in this decision.

Punitive Fine

In its brief TD requests the imposition of a punitive fine of \$4,000 against Alegre because of the large sum of undercharges for the three-month period investigated and the size of the carrier, that is, \$8 million gross revenue per year. TD believes that by filing its own tariffs and participating in numerous Commission transportation proceedings, Alegre is well versed in tariff interpretation. TD cites the portion of the General Freight Decision of 1986 which indicates that enforcement of the program would be strong and vigorous. In this decision, the Commission directs that fines be of sufficient magnitude so they cannot be passed off as the mere cost of doing business. (D.86-04-045, at p. 90).

Alegre asserts that no evidence was presented at the hearing to address a punitive fine. Alegre cites numerous cases to show that evidence is needed to support the imposition of a punitive fine. Alegre asserts that a carrier must be found to be culpable before a fine may be assessed and the amount of the fine must be based upon the degree of culpability. Alegre alleges no culpability for basis for a fine exists because the undercharges admittedly result from Alegre's billing errors.

The fact that Alegre is a carrier of substantial experience and revenues does not automatically place it in greater jeopardy for tariff violations than a smaller and less experienced carrier. In assessing a punitive fine, we must also consider the seriousness of the violations, the reason they occurred and their

results. The record in this proceeding clearly justifies a moderate punitive fine for Alegre's tariff interpretation transgressions. We will therefore impose a \$750.00 punitive fine on Alegre.

Violations of this type and caliber are expeditiously and inexpensively resolved under our Citation Forfeiture and Undercharge Citation programs. These procedures were established to allow our staff to informally settle relatively minor violations. Typically, the carrier pays a small fine and forfeits the undercharges. After giving appropriate consideration to the record of this proceeding, we conclude that Alegre should be required to collect the undercharges and remit them to the Commission.

The Proposed Decision of ALJ Bennett was filed on December 26, 1989. TD duly filed Comments on this Proposed Decision and Alegre duly filed a Reply. We have reviewed and considered both filings and conclude that changes in the Proposed Decision are warranted.

Findings of Fact

1. Alegre is engaged in the business of transporting property over the public highways of this state for compensation.

2. Alegre was issued the following authorities on the respective dates: Highway Common Carrier (1986), Cement Carrier (1976), Contract Carrier (1981), Dump Truck Permit (1973), Heavy Specialized Carrier Permit (1980), Tank Truck Permit (1983), and Agricultural Carrier Permit (1987).

3. During the period August 22 to November 30, 1987, Alegre transported 65 shipments of sugar for Ghirardelli and 72 shipments of sugar for Westco.

4. Alegre assessed and collected charges from Ghirardelli and Westco resulting from a combination of rates contained in its tariff.

5. TD contends that undercharges of \$2,297.37 and \$22,023.30 exist for the accounts of Ghirardelli and Westco, respectively.

6. Alegre stipulates to \$2,297.37 in undercharges for Ghirardelli and \$601.98 for Westco. Alegre disputes all other undercharges.

7. Alegre contends that rating the first 50,000 pounds of the disputed shipments under Item 2005 and the remaining weight under Item 508.3 is correct under its interpretation of these items.

8. According to its interpretation of these items, TD contends that rating the total weight in each disputed shipment under Item 508.3 is correct.

9. Alegre contends that the surcharges contained in its Supplement 1 only apply to the portions of shipments rated under Item 2005.

10. TD contends that to Item 508.3 rates the applicable Central Coastal surcharge and Supplement 1 surcharge should be added.

11. TD contends that Alegre combines shipments to calculate the rate. Alegre contends it does not combine shipments but uses a combination of rates to obtain the lowest applicable rate.

12. Item 508.3 rates apply to shipments subject to a minimum weight of 50,000 pounds.

13. Item 2005 provides that its rates apply to that portion of shipments which weigh not more than 50,000 pounds.

14. The language in Items 508.3 and 2005 concerning minimum and maximum weights is not ambiguous.

15. Shipments of granulated sugar, in bulk, weighing more than 50,000 pounds and moving more than 60 constructive miles must be rated under Items 508.3 and 2005 and the mixed shipments rules in Items 90-91, plus applicable surcharges.

16. Alegre disputes the applicability of Supplement 1 to the disputed shipments.

17. Upon being informed of the violations, Alegre recalculated and rebilled the correct rates and charges for the shipments.

18. Alegre undercharged Ghirardelli in the amount of \$2,297.37 and Westco in the amount of \$601.98

19. Alegre charged rates to Ghirardelli and Westco which were lower than applicable tariff rates without Commission authorization.

20. Alegre bears the primary responsibility to properly interpret and apply its own tariff.

21. The found undercharges will unjustly inure to the benefit of Alegre unless ordered to be remitted to the Commission.

Conclusions of Law

1. Alegre has violated PU Code Sections 494 and 702 by transporting sugar at rates less than those authorized by its tariff.

2. GO 80-B, Rule 6.7 (g) applies to disputed shipments in this proceeding.

3. Rates in Item 2005 and 508.3 applied under the rules in Item 90-91, plus any applicable surcharges in Alegre's Tariff No. 3 apply to disputed shipments in this proceeding.

4. Alegre should be ordered to pay a fine to the Commission pursuant to PU Code s 2100 in the amount of the undercharges and should be ordered to collect the undercharges from Ghirardelli Westco in specified amounts.

5. Alegre should be ordered to pay an additional fine pursuant to PU Code s 1070.

6. Alegre should be ordered to cease and desist from violating Sections 494 and 702 and the rules of this Commission.

7. Alegre should promptly take all reasonable actions to collect the undercharges. If necessary, it should file timely complaints according to PU Code s 737. The Commission TD staff will investigate Alegre's compliance. If it believes that Alegre or its attorney has not acted in good faith, the Commission will reopen this proceeding to determine whether to impose sanctions.

O R D E R

IT IS ORDERED that Frank C. Alegre Trucking, Inc. shall:

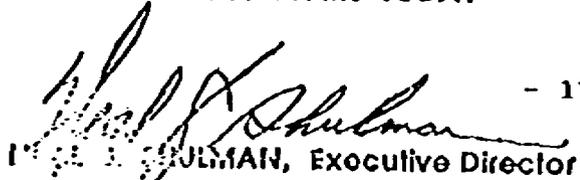
1. Pay a fine of \$750.00 to this Commission under Public Utilities (PU) code s 1070 on or before the 40th day after the effective date of this order.
2. Pay 7% annual interest on this fine, beginning when the payment is delinquent.
3. Pay a fine to this Commission under PU Code s 2100 in the amount \$2,899.35 on or before the 40th day after the effective date of this order.
4. Take such action as may be necessary to collect the undercharges found in the amount of \$2,899.35, including timely legal action under PU Code s 737.
5. Notify the Commission in writing upon collection.
6. Promptly take all reasonable steps to collect the undercharges.
7. 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 this 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.
8. Not charge or collect less than rates authorized by its tariff.

The Executive Director shall have this order personally served upon respondent carrier, Frank Alegre Trucking Inc., and served by mail upon all other respondents.

This order shall become effective for each respondent 30 days after the order is served.

Dated JUL 6 1990, at San Francisco, California.

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


PAUL J. SCHULMAN, Exocutive Director
PB

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