

Decision 90 11 021

NOV 00 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 Mike's Rapid  
Service, Inc., a California  
corporation and Western Building  
Materials Co., a California  
corporation as Shipper Respondent,

Respondents.

**ORIGINAL**

I.89-09-006

(Filed September 7, 1989)

John L. Clark, Attorney at Law, for Mike's  
Rapid Service, Inc., respondent.  
Kathleen C. Maloney, Attorney at Law, and  
William G. Waldorf, for the  
Transportation Division.

O P I N I O N

Mike's Rapid Service, Inc. (Mike's Rapid) transports property over the highway for compensation and operates pursuant to a dump truck carrier permit, a highway common carrier certificate, a highway contract carrier permit, and a vacuum tank carrier, tank truck carrier and agricultural carrier permits. Mike's Rapid operates out of an office in Fresno, California. The shipper respondent, Western Building Materials Co. (Western) operates out of an office in Fresno, California and obtained transportation services from Mike's Rapid.

A staff investigation revealed that Mike's Rapid may have violated Public Utilities (PU) Code §§ 3575 and 3737 and this Commission's General Order (GO) 102-H due to failure to meet their bonding requirements; that Mike's Rapid may have violated PU Code § 3611 by conducting operations as a dump truck carrier before being issued a permit by this Commission; that Mike's Rapid may have violated PU Code § 494 by failing to charge Western the

applicable rates set forth in its tariff on file and in effect with the Commission.

Accordingly, the Commission issued, on September 7, 1989, its Order Instituting Investigation (OII) to determine:

1. Whether Mike's Rapid violated PU Code §§ 3575 and 3737 and this Commission's GO 102-H by failing to meet their bonding requirements.
2. Whether Mike's Rapid violated PU Code § 3611 by conducting operations as a dump truck carrier before being issued a permit by the Commission authorizing such operations.
3. Whether Mike's Rapid violated PU Code § 494 by failing to charge Western the applicable tariff rates.
4. Whether a fine in the amount of any undercharges should be imposed upon Mike's Rapid under PU Code § 2100.
5. Whether Mike's Rapid should be ordered to collect from Western the difference between the payments actually received and the applicable rates and charges pursuant to PU Code § 2100.
6. Whether any or all of the operating authority of Mike's Rapid should be canceled, revoked, or suspended, or in the alternative, a fine should be imposed under PU Code § 1070.
7. Whether Mike's Rapid should be ordered to cease and desist from any unlawful operations or practices.
8. Whether any other order should be entered in the lawful exercise of the Commission's jurisdiction.

This investigation encompasses transportation charges paid by Western to Mike's Rapid as evidenced by freight invoices identified in Attachment A to the OII and all supporting documents.

Procedural Background

Copies of the OII were duly served upon the respondents and they appeared by counsel or representative at a prehearing conference on December 7, 1989. Settlement discussions were held between Mike's Rapid and staff and, just prior to the evidentiary hearing, agreements were reached between Mike's Rapid and the staff that resolved all outstanding issues. These agreements are embodied in a document entitled "Stipulation for Settlement" which is signed by counsel for Mike's Rapid and staff counsel and is dated August 20, 1990 (Stipulation). This Stipulation is annexed as Appendix A to this opinion and is incorporated herein as though set forth verbatim.

Findings of Fact

1. The Stipulation in this proceeding is reasonable, consistent with law, and in the public interest.
2. The Stipulation is recommended by the staff.
3. The Stipulation is uncontested.

Conclusions of Law

1. The Stipulation should be adopted.
2. Since this matter is resolved by the Stipulation, the following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Mike's Rapid Service, Inc. (Mike's Rapid) shall pay a fine of \$1,500 to the Commission in eight consecutive monthly installments of \$187.50 each, the first installment due 30 days after the date of this order.
2. Mike's Rapid shall take all reasonable steps, including legal action if necessary, to collect undercharges in the amount of \$4,035.30 from Western Building Materials Co. (Western).

3. Nike's Rapid shall pay the sum of \$4,035.30 to the Commission in eight consecutive monthly installments of \$504.41 each, the first installment due 30 days after the date of this order.

4. The obligation of Mike's Rapid to pay the Commission \$4,035.30 is not contingent upon its ability to collect these undercharges from Western, and the payments shall be made regardless of whether Mike's Rapid is successful in collecting the undercharges from Western.

5. This investigation is terminated.

6. All respondents in I.89-09-006 shall hence forth not be subject to any future undercharges, sanctions, or fines arising from transportation performed by Mike's Rapid for Western to and including August 20, 1990 and shall be relieved of liability for the payment of any amounts other than those specifically agreed to be paid in the Stipulation For Settlement annexed hereto as Appendix A.

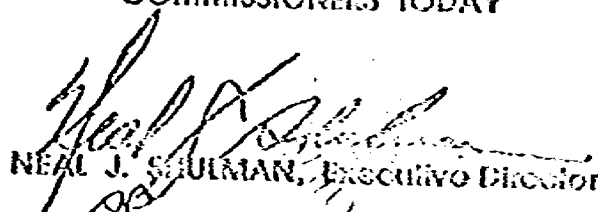
This order is effective today.

Dated NOV 09 1990, 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

  
NEAL J. SEELMAN, Executive Director

APPENDIX A

Page 1

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own  
motion into the operations, rates, and  
practices of Mike's Rapid Service,  
Inc., a California corporation and  
Western Building Materials Co., a  
California corporation as Shipper  
Respondent.

I.89-09-006

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 Mike's Rapid Service, Inc. (Mike's) 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 sum is to be paid in eight monthly installments of \$187.50 each. The first installment is 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.

RECEIVED  
AUG 16 1990

LEGAL DIVISION

APPENDIX A  
Page 2

2. Respondent Mike's agrees to take all reasonable steps including legal action if necessary to collect undercharges in the amount of \$4,035.30 for the transportation of property for the shipper respondent in this proceeding and to pay a sum of \$4,035.30 to the Public Utilities Commission pursuant to Section 2100 of the Public Utilities Code. This sum is to be paid in eight monthly installments of \$504.41 each. The first installment is 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. Respondent's obligation to make the above-described payments is not contingent upon respondent's ability to collect the undercharges from the shipper respondent. Respondent is responsible for making the above-described payments regardless of whether respondent is successful in collecting the undercharges amount from the shipper respondent.

3. 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.89-09-006 be terminated, that all respondents in I.89-09-006 shall henceforth not be subject to any future undercharges, sanctions, or fines arising from transportation performed by Mike's for the shipper respondent to and including the date of this Stipulation, and be

APPENDIX A

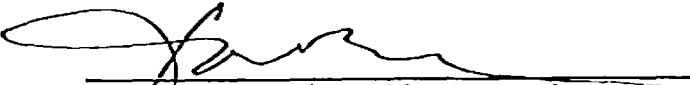
Page 3

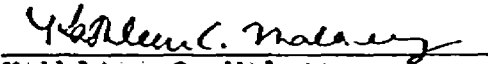
relieved of liability for the payment of any amounts other than those specifically agreed to be paid in this stipulation.

4. The parties enter into this agreement freely and voluntarily.

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

Dated: *August 20, 1990*

  
John L. Clark, Attorney at Law  
Counsel for Mike's Rapid  
Service, Inc.  
AMOUR, GOODIN, SCHLOTZ & MACBRIDE  
505 Sansome St., 9th Floor  
San Francisco, CA 94111

  
Kathleen C. Maloney  
Attorney at law  
Counsel for Compliance  
and Enforcement Branch  
of Transportation Division

(END OF APPENDIX A)