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Decision 91-06-006 June 5, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates, and practices of C & A
Trucking, a California corporation,
and Domtar Gypsum America, Inc.,
a California corporation as Shipper
Respondent.

ORIGINAL

I.90-01-028
(Filed January 24, 1990)

Respondents.

Daniel W. Baker, Attorney at Law, and Cathy E.
Anderson, for C & A Trucking, and Thomas M.
Harryman, for Domtar Gypsum, Inc.,
respondents.
Lawrence O. Garcia, Attorney at Law, for the
Transportation Division.

O P I N I O N

C & A Trucking (C & A) 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, a cement contract carrier permit, and an agricultural carrier permit. C & A operates out of an office in Cotati, California. The shipper respondent, Domtar Gypsum America, Inc. (Domtar), operates out of an office in Oakland, California, and obtained transportation services from C & A.

An investigation by the Transportation Division Compliance and Enforcement Branch (Branch) revealed that C & A may have violated Public Utilities (PU) Code § 494 by failing to charge Domtar the applicable rates set forth in its tariff on file and in effect with the Commission.

Accordingly, the Commission issued, on January 24, 1990, its Order Instituting Investigation (OII) to determine:

1. Whether respondent C & A has violated Section 494 of the Public Utilities Code by failing to charge respondent shipper the applicable rates.
2. Whether in addition to the transportation records listed in Attachment A, respondent C & A should be ordered to review its records for the period July 1, 1987 to and including September 30, 1987 for the purpose of ascertaining the amount of undercharges on shipments of gypsum wallboard transported during said period.
3. Whether in the event that sums less than the applicable rates are found to have been charged, collected, or received, during the period April 1, 1987 to and including September 30, 1987, a fine in the amount of the undercharges should be imposed upon respondent C & A pursuant to Section 2100 of the Public Utilities Code.
4. Whether respondent C & A should be ordered to collect from the respondent shipper the difference between payments actually received and the applicable rates and charges pursuant to Section 2100 of the Public Utilities Code.
5. Whether any or all of respondent C & A's operating authority should be cancelled, revoked, or suspended, or in the alternative, a fine imposed pursuant to Section 1070 of the Public Utilities Code.
6. Whether respondent C & A should be ordered to cease and desist from any and all unlawful operations and practices.
7. Whether any other orders that may be appropriate should be entered in the lawful exercise of the Commission's jurisdiction.

This investigation encompasses transportation charges paid by Domtar to C & A as evidenced by freight invoices identified in Attachment A to the OII and all supporting documents.

Copies of the OII were duly served upon the respondents and they appeared by counsel or representative at a prehearing conference on March 16, 1990. A prehearing conference was held on March 16, 1990. Settlement discussions were held and agreements were reached between C & A, Domtar, and the Transportation Division that resolved all outstanding issues. These agreements are embodied in a document entitled "Stipulation for Settlement" which is signed by counsel for C & A, authorized representative for Domtar, and Branch counsel and is dated March 12, 1991 (Stipulation). This Stipulation is annexed as Appendix A to this opinion and is incorporated herein as though set forth verbatim.

The Commission has reviewed the Stipulation and Settlement and finds that it is reasonable, consistent with the law, and in the public interest.

Findings of Fact

1. C & A, Domtar, and Branch have entered into a Stipulation and Settlement which resolves all outstanding issues in this proceeding.
2. The Stipulation in this proceeding is reasonable, consistent with law, and in the public interest.
3. The Stipulation is recommended by the staff.
4. 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. C & A Trucking (C & A) shall pay a fine of \$1,000 to the Commission in five consecutive bimonthly installments of \$200 each, the first installment due 30 days after the date of this order.

2. C & A shall take all reasonable steps, including legal action if necessary, to collect undercharges in the amount of \$2,500 from Domtar Gypsum America, Inc. (Domtar).

3. Domtar shall pay the sum of \$2,500 directly to the Commission pursuant to Section 2100 of the Public Utilities Code in lieu of payment through respondent C & A as specified in Ordering Paragraph 2 above. This amount shall be paid in ten consecutive monthly installments of \$250 each, with the first installment due 30 days after the date of this order.

4. This investigation is terminated.

5. All respondents in I.90-01-028 shall hence forth not be subject to any future undercharges, sanctions, or fines arising from transportation performed by C & A for Domtar to and including March 12, 1991 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 June 5, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

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

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own)
motion into the operations, rates, and)
practices of C & A Trucking, a)
California corporation, and Domtar) I. 90-01-028
Gypsum Inc., a Delaware corporation as)
Shipper Respondent.)
_____)

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 C & A Trucking (C & A) agrees to pay an amount to be deposited with the Public Utilities Commission ("Commission") in the sum of \$1,000 pursuant to Section 1070 of the Public Utilities Code. This sum is to be paid in five monthly installments

of \$200 each. The installments will be payable every other month. 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.

2. Respondent C & A agrees to take all reasonable steps including legal action if necessary to collect undercharges in the amount of \$2,500.00 for the transportation of property for the shipper respondent in this proceeding and to pay a sum of \$2,500.00 to the Public Utilities Commission pursuant to Section 2100.

3. Respondent C & A and the Commission's Compliance and Enforcement Branch of the Transportation Division (Commission Staff) agree that the \$2,500.00 may be paid directly by the shipper respondent to the Commission pursuant to Section 2100 of the Public Utilities Code in lieu of payment through Respondent C & A as specified in Paragraph 2 above.

4. Shipper respondent Domtar Gypsum Inc. (Domtar) agree that the \$2,500.00 may be paid directly to the Commission pursuant to Section 2100 of the Public Utilities Code in lieu of payment through

Respondent C & A as specified in Paragraph 2 above. This amount is to be paid in ten consecutive monthly installments of \$250.00 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.

5. Respondent C & A agrees that \$2,500 may be paid directly by Respondent Domtar to the Public Utilities Commission pursuant to Section 2100.

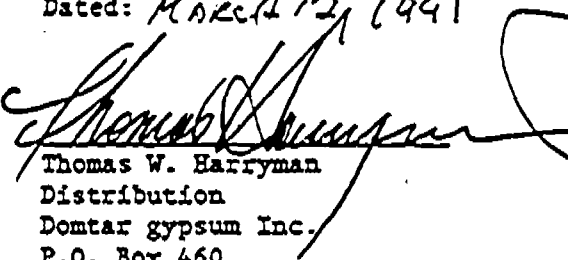
6. The staff of the Public Utilities Commission, specifically the Compliance and Enforcement Branch of the Transportation Division, agrees with the terms of this stipulation and recommends to the Commission that these terms be accepted, that this proceeding known as I. 90-01-028 be terminated, that all respondents in I. 90-01-028 shall henceforth not be subject to any future undercharges, sanctions, or fines arising from transportation performed by C & A for the shipper respondent 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

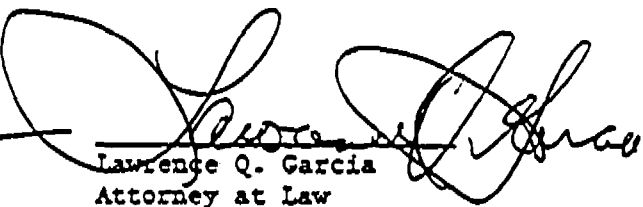
stipulation.

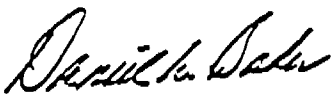
7. The parties enter into this agreement freely and voluntarily.

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

Dated: *MARCH 12, 1991*


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