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JUN 20 1991

Decision 91-06-031 June 19, 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 Two Rivers Enterprises, Inc., a California corporation, a Respondent Carrier, R. C. Collet, Inc., a California corporation, as Shipper Respondent, and fourteen respondent carriers listed in Attachment A of Order Instituting Investigation 90-06-038, Respondents.

ORIGINAL

I.90-06-038 (Filed June 20, 1990)

Michael J. Stecher, Attorney at Law, for Two Rivers Enterprises, Inc., respondent. Lawrence O. Garcia, Attorney at Law, for the Transportation Division.

OPINION

Two Rivers Enterprises, Inc. (Two Rivers) transports property over the highway for compensation, operating pursuant to dump truck carrier and tank truck carrier permits. Two Rivers operates from offices in Sacramento.

The other fourteen respondents (respondent carriers) also transport property over the public highways of this state for compensation. They are listed in Attachment A to the Order Instituting Investigation.

The shipper respondent, R. C. Collet, Inc. (Collet), operates out of an office in Woodland and obtained transportation services from Two Rivers and the other respondent carriers.

An investigation conducted by the Commission's Transportation Division staff (staff) revealed that Two Rivers and the respondent carriers may have violated Public Utilities (PU) Code §§ 3664, 3667, 3668, and 3737 by failing to issue proper

freight bills, and by failing to charge Collet the applicable minimum rates; that respondent carriers may have violated PU Code §§ 3664, 3667, 3668, and 3737 by providing subhaul transportation service at less than applicable minimum rates; that Two Rivers may have violated PU Code § 3669 by procuring transportation service for Collet at rates less than applicable minimum rates.

Accordingly, the Commission issued on June 20, 1990 its OII to determine formally whether the violations alleged by the staff had occurred. This investigation encompasses transportation charges paid by Collet to Two Rivers and respondent carriers as evidenced by freight bills identified in Appendices B through N to the OII and all supporting documents.

Procedural Background

Copies of the OII were duly served upon the respondents. Settlement discussions were held between Two Rivers, Collet, 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 Two Rivers, Collet, and staff counsel and is dated March 6, 1991 (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.

ORDER

IT IS ORDERED that:

1. Two Rivers Enterprises (Two Rivers) shall pay a fine of \$3,000 to the Commission in ten consecutive monthly installments of \$300 each, the first installment due 30 days after the date of this order.
2. Two Rivers shall take all reasonable steps, including legal action if necessary, to collect undercharges in the amount of \$25,000 from R. C. Collet, Inc. (Collet).
3. Two Rivers shall pay the sum of \$25,000 to the Commission in ten consecutive monthly installments of \$2,500 each, the first installment due 30 days after the date of this order.
4. Two Rivers shall take all reasonable actions to collect \$750 from each of the respondent carriers listed in Attachment A of I.90-06-038; or it shall pay such sums itself. In either case, Two Rivers shall pay such sums to the Commission within 90 days of the date of this order.
5. This investigation is terminated.
6. All respondents in I.90-06-038 shall henceforth not be subject to any future undercharges, sanctions, or fines arising from transportation performed by Two Rivers and respondent carriers for Collet to and including March 6, 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 19, 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
WAS APPROVED
COMMISSIONERS

Neal J. Spillman
NEAL J. SPILLMAN, Executive Director

ps

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own
motion into the operations, rates, and
practices of Two Rivers Enterprises,
Inc., a California Corporation, a
Respondent Carrier, R. C. Collet, Inc.,
a California Corporation, as Shipper
Respondent, and thirteen respondent
carriers listed in Attachment A of
Order Instituting Investigation
I. 90-06-038.

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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.

In addition, since this stipulation represents a compromise
by the Parties, the Parties have entered into this stipulation on
the basis that the Commission's adoption of this stipulation not
be construed as an admission or concession by any party regarding
facts or law in dispute in this proceeding. Furthermore, it is

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the intent and understanding of the Parties that Commission adoption of this stipulation will not be construed as a precedent or policy statement of any kind for or against the Parties in any current or future proceeding.

NOW, THEREFORE, THE PARTIES DO STIPULATE AS FOLLOWS:

1. Respondent Two Rivers Enterprises, Inc. (Two Rivers) agrees to pay an amount to be deposited with the Public Utilities Commission ("Commission") in the sum of \$ 3,000 pursuant to Section 3774 of the Public Utilities Code. This amount is to be paid in ten (10) consecutive monthly installments of \$ 300, 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 Two Rivers agrees to take all reasonable steps including legal action if necessary to collect undercharges in the amount of \$ 25,000 for the transportation of property for Shipper Respondent, R. C. Collet, Inc. and to pay a sum of \$ 25,000 to the Public Utilities Commission pursuant to Section 3800. This amount may be paid in ten (10) consecutive monthly installments of \$ 2,500, the first installment due 30 days after

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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.

3. Thirteen Respondent Carriers listed in Attachment A of Order Instituting Investigation I. 90-06-038 agree to pay an amount to be deposited with the Public Utilities Commission ("Commission") in the sum of \$ 750 pursuant to Section 3774 of the Public Utilities Code. These amounts are to be paid within 90 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. These amounts may be paid through Carrier Respondent Two Rivers.

4. Respondent Shipper, R. C. Collet, Inc., has been associated or affiliated with Respondent Two Rivers Enterprises, Inc., by reason of common ownership, control or management. The dump truck carrier permit held by respondent Two Rivers contains an "alter ego" restriction as follows: "Whenever permittee engages other carriers for the transportation of property of Two Rivers Enterprises, Inc., subsidiaries or affiliates thereof or customers or suppliers of said corporation, subsidiaries or affiliates thereof, permittee shall not pay such carriers less than 100% of the applicable minimum rates and charges established by the Commission for the

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transportation actually performed by such other carriers."

5. Respondent Shipper, R. C. Collet, Inc., agrees that Collet will divest itself of any ownership interest in Respondent Carrier Two Rivers Enterprises, Inc. on or before December 31, 1990. The License Section of the Commission, upon receipt of evidence of such divestiture, agrees to remove the above referenced "alter ego" restriction from the operating authority held by Respondent Carrier Two Rivers Enterprises, Inc. under Cal T-137,543.


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. 90-06-038 be terminated, that all respondents in I. 90-06-038 shall henceforth not be subject to any future undercharges, sanctions, or fines arising from transportation performed by respondent carriers as arranged by Respondent Carrier Two Rivers for the shipper respondent R. C. Collet, Inc. 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.


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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 6, 1991*


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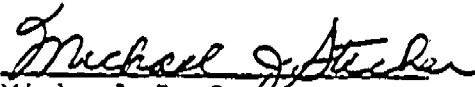
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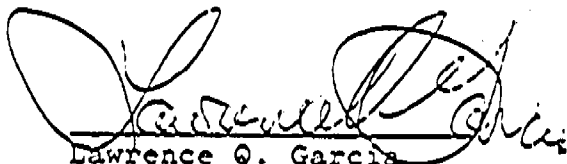
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(END OF APPENDIX A)