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DEC 4 1991

Decision 91-12-004 December 4, 1991

W. M. Lyles Co., a Calltogall of good tog BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own) (D) motion into the operations, rates and) practices of Ali C. Fernandez, Morris) practices of Ali C. Fernandez, Morris)
Fernandez and Carlos Fernandez, a)
partnership doing business as ALI C.)
FERNANDEZ & BROS., Terry James)
Johnson, an individual, Johnson's) (Filed September 7, 1989) Trucking, Inc., a corporation doing business as J & D TRUCKING, W. M. Lyles Co., a California of the property of boots of the property of corporation, carrier respondents, and a shipper and a shipper ్లు ∲ీ? కంగ్ కుండ్ శక్షిక్షిక్ అక్కానికి తీవ్ చిందాన్నికిందా

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Ali C. Fernandez, for Ali C. Fernandez & Bros.; Michael J. Stecher, Attorney at Law, for W. M. Lyles Co.; Jimmie D. Johnson, for Johnson Trucking, Inc.; and Terry James Johnson, for himself. Lawrence O. Garcia, Attorney at Law, for Compliance and Enforcement Branch of the Transportation Division.

OPINION

and the control of th Ali C. Fernandez, Morri Fernandez, and Carlos Fernandez, a partnership doing busines as Ali C. Fernandez & Bros., transport property over the highways for compensation, pursuant to a dump truck carrier permit issued on January 4, 1973.

Terry James Johnson, an individual doing business as Terry James Johnson Trucking, transports property over the public highways for compensation, pursuant to a dump truck carrier permit issued May 6, 1977, and other operating permits has appropriately

Johnson's Trucking, Inc., a California corporation doing business as J & D Trucking, transports property over the public highways for compensation, pursuant to a dump truck permit issued February 1, 1980, and other operating authorities. eg: 5 030

W. M. Lyles Co., a California corporation, has received transportation services from the above carriers.

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A Transportation Division investigation shows that in performing transportation services for Lyles the carriers may have violated certain provisions of the Public Utilities Code pertaining to the application of minimum rates. The order instituting investigation alleges that these violations may have occured.

A prehearing conference was held on January 5, 1990. The parties agreed in principle on all issues in the case except the exact amount of undercharges due. The case was taken off calendar, subject to further study by the Transportation Division of the respondents' position on undercharges. Further negotiations between the Transportation Division and respondents by letter and telephone resulted in a stipulated settlement of the case. A copy of the settlement agreement is appended hereto. Findings of Fact

- The stipulation is reasonable, consistent with law, and in the public interest.
- 2. The stipulation is recommended by the Transportation Division.
 - 3. The stipulation is uncontested. The state of the s

Conclusions of Law

- 1. The stipulation should be adopted.
- The stipulation should be adopted.
 Since this case is resolved by stipulation, the following order should be effective immediately.

ORDER CONTRACTOR SERVICE SERVICE CONTRACTOR OF THE PROPERTY OF වේ<u>ට වෙන වන ව</u>න්වේ සහ සොදාල දැන්න වේ. වන සමුදුමෙන නම්ම වෙනුවෙන සමුද්ග

IT IS ORDERED that: The transfer that the state of the st

1. Ali C. Fernandez, Morris Fernandez, and Carlos Fernandez, a partnership doing business as Ali C. Fernandez & Bros., shall pay a fine of \$1,500, pursuant to Public Utilities (PU) Code § 3774, which fine shall be due twenty days after the effective date of

this order, provided that the amount may be paid over a so well as twelve-month period, in equal installments, beginning on the same and effective date.

- 2. Terry James Johnson shall pay a fine of \$1,000, pursuant to PU Code § 3774, which fine shall be due twenty days after the effective date of this order, provided that the amount may be paid over a twelve-month period, in equal installments, beginning on the same effective date.
- 3. Johnson's Trucking, Inc., doing business as J & D Trucking, shall pay a fine of \$3,000, pursuant to PU Code § 3774, which fine shall be due twenty days after the effective date of this order, provided that the amount may be paid over a twelve-month period, in equal installments, beginning on the same effective date.
- 4. Ali C. Fernandez & Bros. shall pay a fine of \$18,848.85, pursuant to PU Code § 3800, which fine shall be due twenty days after the effective date of this order, provided that the amount may be paid over a twenty-four month period, in equal installments, beginning on the same effective date.
- 5. Ali C. Fernandez & Bros. shall collect from W. M. Lyles Co. the sum of \$18,848.85 in undercharges, pursuant to PU Code § 3800, provided that the amount may be paid and collected over a twenty-four month period; in equal-installments, beginning on the same effective date.
- 6. Ali C. Fernandez & Bros. shall take all reasonable steps, including legal action if necessary, to collect from W. M. Lyles Co. the amount of \$18,848.85 in undercharges for the transportation of property.
- 7. The respondents shall henceforth not be subject to any further actions or investigations for undercharges, sanctions, or fines arising from transportation performed by Ali C. Fernandez & Bros. for W. M. Lyles Co., to and including the execution date of the Stipulation for Settlement, and respondents shall be relieved

of liability for the payment of any amounts other than those wounds and specifically agreed to be paid in the stipulation. The most of any appearance of the stipulation of the stipulation of the stipulation.

8. This investigation is terminated and the proceeding is about a closed.

PATRICIA M. ECKERT
President
JOHN, B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

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MEAL J. SAULMAN, Executive Executive

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THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Johnson, an individual, Johnson's

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W. M. Lyles Co., a California

V. M. Lyles Co., a California corporation, carrier respondents and) a shipper.

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STIPULATION FOR SETTLEMENT TO THE PROPERTY OF THE PROPERTY OF

ALL C. FERNANDEZ & BROS., Terry James Johnson, J. & Day Tonor TRUCKING , W. M. Lyles Co., and the staff of the Transportation Division of the CALIFORNIA PUBLIC UTILITIES COMMISSION, Parties to the above referenced proceeding, desiring to avoid a second and the second and the second and the second areas are second as a second a protracted, complex, and adversarial proceeding, have agreed upon the second se a settlement of said issues and desire to submit this Stipulation For Settlement for approval and adoption by the Public Utilities Commission 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' adoption of this stipulation not be construed as an admission or concession by any any party regarding facts of law in dispute in this proceeding. Furthermore, it is the intent and understanding of the Parties that Commission adoption of this stipulation will not be

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construed as a precedent or policy statement of any kind for or against the Parties in this proceeding.

NOW, THEREFORE, the Parties do stipulate as follows:

- 1. Ali C. Fernandez, Morris Fernandez and Carlos Fernandez, a partnership doing business as, ALI C. FERNANDEZ & BROS., agree to pay a fine of \$1,500 pursuant to Public Utilities Code Section 3774, due twenty days after the effective date of this order. However said amount may be paid over a twelve month period, in equal payments, commencing on the same effective date.
- 2. Terry James Johnson, an individual, agrees to pay a fine of \$1,000, pursuant to Public Utilities Code Section 3774, due on the effective date of the Commission's order approving this stipulation. However said amount may be paid over a twelve month period, in equal payments, commencing on the same date.
- 3. Johnson's Trucking, Inc., a corporation, doing business as J & D TRUCKING, agrees to pay a fine of \$3,000 pursuant to Public Utilities Code Section 3774, due twenty days after the effective date of the Commission's order approving this stipulation. However said amount may be paid over a twelve month period, in equal payments, commencing on the same effective date.
- 4. ALI C. FERNANDEZ & BROS., agree to pay a fine in the amount of \$18,848.85, pursuant to Public Utilities Code Section 3800, such amount being due twenty days after the effective date of the Commission's order approving this stipulation. However said amount may be paid over a 24 month period, in equal payments, commencing on the same effective date.

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- 5. ALI C. FERNANDEZ & BROS., agree to collect from the shipper, W. M. Lyle Co., a corporation, the sum of \$18,848.85 in undercharges, pursuant to Public Utilities Code Section 3800.

 However, such amount may be paid and collected as in No. 4-above.
- take all reasonable steps, including legal action, if necessary to collect the amount of \$18,848.85 in undercharges, for the transportation of property from W. M. Lyles Co.
- 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.89-09-002 be terminated, that all respondents in I.89-09-002 shall henceforth not be subject to any future actions or investigations for undercharges, sanctions or fines arising from transportation performed by ALI C. FERNANDEZ & BROS. for W. M. Lyes Co., to and including the date this agreement is signed, 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.

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APPENDIX Page 4

Michael J. Stecher, and the same accurate Lawrence Q. Garcia W. About the Attorney at Law Continuous Counsel for Compliance to Counsel for Compliance to Counsel W. M. Lyles Co.

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