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Decision 92-03-076 March 31, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own Motion into the refusal and
failure of Brake Meier Truckload,
Inc. to comply with Decision No.
90-08-019.

ORIGINAL

I.89-09-005
(Filed September 7, 1989)

O P I N I O N

In Decision (D.) 90-08-019 the Commission ordered Brake Meier Truckload, Inc., (Brake Meier) to pay a fine of \$4,000 in four monthly installments. Brake Meier did not pay as ordered and as it had agreed in the underlying stipulation for settlement. Accordingly, the Commission issued D.91-09-039, reopening the investigation and ordering Brake Meier to show cause why its operating authorities should not be suspended or revoked for failure to comply with D.90-08-019.

Brake Meier entered into settlement negotiations with the Transportation Division, which resulted in a new Stipulation for Settlement, dated February 18, 1992, and signed by Brake Meier's representative and counsel for the Transportation Division. In the new stipulation Brake Meier agrees to pay \$4,000 to the Commission, pursuant to Public Utilities Code Section 1070. This amount is to be paid in 13 consecutive monthly installments of \$300 and one final installment of \$100. The first installment is due 30 days after the issuance of the Commission's order approving and adopting the stipulation.

The Transportation Division agrees to the terms of the stipulation and recommends that those terms be accepted and adopted and that the proceeding be closed. A copy of the stipulation is appended.

Discussion

Since this is the second stipulation settling this case, and since Brake Meier made no effort to comply with D.90-08-019, we wish to ensure that the terms of this stipulation will be fulfilled. Accordingly, we will authorize and direct the Transportation Division to place before us a resolution suspending Brake Meier's operating authority, if any installment required by the following order is delinquent for more than 10 days. We will further authorize and direct the Transportation Division to place before us a resolution revoking Brake Meier's operating authorities, if a second installment is delinquent for more than 10 days.

Findings of Fact

1. 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.
4. Brake Meier did not comply with D.90-08-019, which adopted the original stipulation settling this proceeding.

Conclusions of Law

1. The stipulation should be adopted.
2. The Transportation Division should be authorized and directed to place resolutions before the Commission suspending or revoking Brake Meier's operating authorities as a means of ensuring the timely payment of the installments ordered below.
3. Since the case is resolved by stipulation, the following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Brake Meier Truckload, Inc., (Brake Meier) shall pay \$4,000 to the Commission in thirteen (13) consecutive monthly installments of \$300 each and one (1) final installment of \$100. The first installment is due thirty (30) days after the date of issuance of this order.

2. Upon payment in full of the amount ordered above, Brake Meier shall thenceforth not be subject to any further sanctions or fines arising from transportation performed by Brake Meier to and including the date of the stipulation; and Brake Meier shall be relieved of liability for the payment of any amount other than that amount specifically agreed to be paid in the stipulation.

3. If any installment ordered herein is late by more than 10 days, the Transportation Division is authorized and directed to place a resolution before the Commission suspending Brake Meier's operating authorities. If a second installment is late by more than 10 days, the Transportation Division is authorized and directed to place a resolution before the Commission revoking Brake Meier's operating authorities.

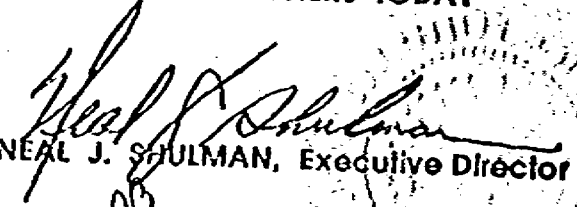
4. This investigation is terminated, and the docket is closed.

This order is effective today.

Dated March 31, 1992, at San Francisco, California.

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

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


NEAL J. SHULMAN, Executive Director

I.89-09-005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own
motion into the operations, rates and
practices of BRAKE MEIER TRUCKLOAD,
INC., a California corporation, and
Marubeni America Corporation, a
foreign corporation, incorporated in
New York, as Shipper Respondent.

I. 89-09-005

STIPULATION FOR SETTLEMENT
PETITION TO MODIFY D. 90-08-019

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 it on the basis that the Commission's adoption of said STIPULATION not be construed as an admission or concession by any party regarding the facts or 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 construed as a precedent or policy statement of any kind for or against the Parties in any current or future proceeding.

I. 89-09-005 /ALJ/RTB/

NOW, THEREFORE, THE PARTIES DO STIPULATE AS FOLLOWS:

1. Respondent Brake Meier Truckload, Inc. (Brake Meier) agrees to pay an amount to be deposited with the Public Utilities Commission ("Commission") in the sum of \$ 4,000 pursuant to Section 1070 of the Public Utilities Code. This amount is to be paid in thirteen (13) consecutive monthly installments of \$ 300 each with one final installment of \$ 100. 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.

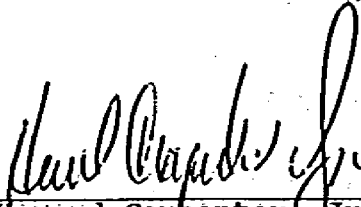
2. The staff of the Public Utilities Commission, specifically the Compliance and Enforcement Branch of the Transportation Division, agrees with the terms of this stipulation and recommends to the Commission that these terms be accepted, that this proceeding known as I. 89-09-005 be terminated, that respondent Brake Meier shall henceforth not be subject to any future sanctions or fines arising from transportation performed by Brake Meier to and including the date of this Stipulation, and be relieved of liability for the payment of any amount other than that specifically agreed to be paid in this stipulation.

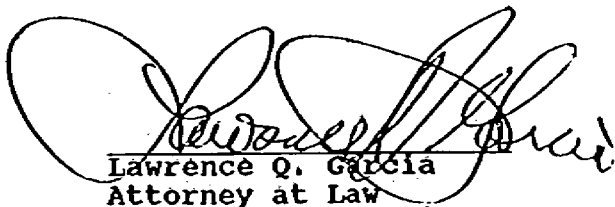
I. 89-09-005 /ALJ/RTB/

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

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

Dated: February 18, 1992


Howard Carpenter, Jr.
Authorized Representative
Brake Meier Truckload, Inc.
P.O. Box 3781
Fontana, CA 92334


Lawrence Q. Garcia
Attorney at Law
Counsel for Compliance
and Enforcement Branch
of Transportation Division