

Mailed

MAY 20 1992

Decision 92-05-045 May 20, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
 own motion into the operations,
 rates, and practices of SELECT
 CARRIERS EXPRESS, INC., a California
 corporation, respondent carrier,
 and W. R. GRACE & CO., a Connecticut
 corporation, respondent shipper.

ORIGINAL

I.90-06-040
(Filed June 20, 1990)

O P I N I O N

Select Carriers Express, Inc. (Select), a California corporation with offices in Newark, is a highway carrier operating pursuant to highway common carrier and highway contract carrier authorities issued in 1986.

W. R. Grace & Co. (Grace), located in Newark, is a shipper of property.

A Transportation Division investigation indicates that Select has provided transportation services to Grace. It further appears that Grace may have received services from Select at rates and charges less than the applicable rates and charges.

Accordingly, Select may have violated Public Utilities (PU) Code §§ 494, 702, and 3737, and General Order (GO) 147-A and 155.

The Transportation Division attempted to resolve this matter informally by issuing and undercharge citation in the amount of \$29,176.96 and a citation forfeiture of \$1,500. However, Select denied both of the citations.

A settlement conference was held November 5, 1990 in San Francisco, at which time the parties negotiated off-the-record regarding the issues in this case. Further settlement negotiations were conducted by telephone and letter, which culminated in a written stipulation for settlement signed by representatives of

Select, Grace, and the Transportation Division. The stipulation is dated December 5, 1991.

In the stipulation Select agrees to pay the sum of \$2,000, pursuant to PU Code §§ 1070 and 3774. This sum is to be paid in eight monthly installments of \$250 each. The first installment is due 30 days after the issuance of the Commission's order approving and adopting the terms of the stipulation.

Grace agrees to pay \$20,130 directly to the Commission, pursuant to PU Code §§ 494 and 3800. The amount is due 30 days after issuance of the Commission's final order approving and adopting the terms of the stipulation.

Select and the Transportation Division agree that the sum of \$20,130 may be paid directly by Grace to the Commission in lieu of payment through Select. If the amount of \$20,130 is for any reason not paid to the Commission, Select agrees to take all reasonable steps including legal action, if necessary, to collect undercharges in the amount of \$20,130 for the transportation of property for Grace and to pay the sum of \$20,130 to the Commission pursuant to PU Code §§ 494 and 3800.

The Transportation Division agrees with the terms of the stipulation and recommends to the Commission that its terms be accepted; that this proceeding be terminated; that all respondents in this proceeding not be subject to any further undercharges, sanctions, or fines arising from transportation performed by Select or Grace to and including the date of the stipulation; and that they be relieved of liability for the payment of any amounts other than those specifically agreed to be paid in the stipulation.

A copy of the stipulation is appended.

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.

Conclusions of Law

1. The stipulation should be adopted.

2. Since the case is resolved by stipulation, the following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Select Carriers Express, Inc. (Select), a California corporation, shall pay \$2,000 to the Commission in eight monthly installments of \$250 each. The first installment is due 30 days after the date of issuance of this order.

2. W. R. Grace & Co. (Grace) shall pay \$20,130 directly to the Commission. The amount is due 30 days after the date of issuance of this order.

3. If the sum of \$20,130 is for any reason not paid to the Commission by Grace, Select shall take all reasonable steps, including legal action, if necessary, to collect undercharges in the amount of \$20,130 from Grace; and to pay said sum to the Commission.

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

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

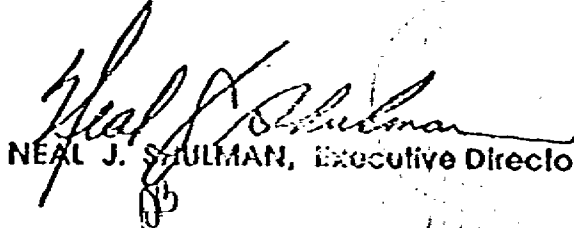
This order is effective today.

Dated May 20, 1992, at San Francisco, California.

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

Commissioner Patricia M. Eckert,
being necessarily absent, did not
participate.

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


NEAL J. SHULMAN, Executive Director

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own)
 motion into the operations, rates, and)
 practices of SELECT CARRIERS EXPRESS,)
 INC., a California corporation, respon-)
 dent carrier, and W. R. GRACE & CO.,)
 a Connecticut corporation, respondent)
 shipper.)

OII.90-06-040

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 Settlement (STIPULATION), for approval and adoption by the 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 it on the basis that the Commission's adoption of said STIPULATION not be construed as an admission or concession by any party regarding 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.

THEREFORE, THE PARTIES DO STIPULATE AS FOLLOWS:

1. Respondent SELECT CARRIERS EXPRESS, INC., (SELECT), agrees to pay an amount to be deposited with the Public Utilities Commission (Commission) in the sum of \$2,000 pursuant to Sections 1070 and 3774 of the Public Utilities Code (CODE). This sum is to be paid in eight monthly installments of \$250 each. The installments will be payable monthly. The first installment is due 30 days after issuance of the Commission's final order approving and adopting the terms of this STIPULATION as its final disposition of the matters subject to this investigation.

2. Respondent W. R. GRACE & CO., a Connecticut corporation, (GRACE), agrees to pay \$20,130 directly to the Commission pursuant to Section 494 and 3800 of the CODE. The amount is due 30 days after issuance of the Commission's final order approving and adopting the terms of this STIPULATION as its final disposition of the matters subject to this investigation.

3. Respondent SELECT and the Commission's Compliance and Enforcement Branch of the Transportation Division (STAFF), agree that the \$20,130 may be paid directly by the shipper respondent to the Commission pursuant to Sections 494 and 3800 of the Code in lieu of payment through Respondent SELECT.

4. If the amount of \$20,130 for any reason is not paid to the Commission, Respondent SELECT agrees to take all reasonable steps including legal action if necessary to collect undercharges in the amount of \$20,130 for the transportation of property for the shipper Respondent GRACE in this proceeding and to pay a sum of \$20,130 to the Commission pursuant to Sections 494 and 3800 of the CODE.

5. The STAFF of the Commission, specifically the Compliance and Enforcement Branch of the Transportation Division, agree with the terms of this stipulation and recommends to the Commission that these terms be accepted, that this proceeding know as I. 90-06-040 be terminated, that all respondents in I. 90-06-040 shall henceforth not be subject to any future undercharges, sanctions, or fines arising from transportation performed by SELECT for GRACE 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.

APPENDIX

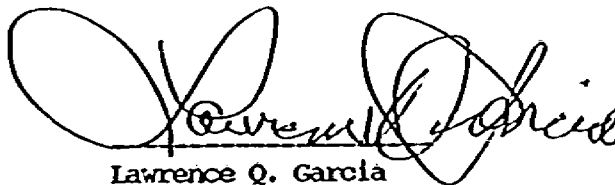
6. The parties enter into this agreement freely and voluntarily.

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

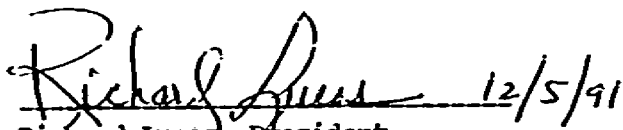
DATED:



Thomas E. Winkel
Manufacturing Manager
W. R. Grace & Co.
62 Whittenore Ave
Cambridge, MA 02140



Lawrence Q. Garcia
Attorney At Law
Counsel for Compliance
and Enforcement Branch
Transportation Div.



Richard Lucas, President
Select Carriers Express, Inc.
38201 Cherry Street
Newark, CA 94560

(END OF APPENDIX)