

SEP 3 1992

Decision 92-09-010 September 2, 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 John Perez & Sons, a)
 California corporation, and of Cooney)
 & McLoughlin Supply, Inc., a California)
 corporation, doing business as Olympic)
 Supply,)
 Respondents.)

I.91-02-077
(Filed February 21, 1991)

O P I N I O N

John Perez & Sons, (Perez), a California corporation, whose mailing address is P. O. Box 525, Clarksburg, CA 95612, is engaged in the business of transporting property over the public highways of this state for compensation pursuant to highway contract carrier, tank truck carrier, and agricultural carrier permits, all in File No. T-141,972.

A Transportation Division investigation indicates that Perez provided transportation services to Cooney & McLoughlin Supply, Inc., a California corporation, doing business as Olympic Supply, (Olympic) whose mailing address is 4841 83rd St., Sacramento, CA 95826. In doing so, Perez may have charged and collected rates less than the applicable rates, in violation of §§ 3664 and 3667 of the Public Utilities (PU) Code.

The Order Instituting Investigation was duly served on Perez and Olympic. A prehearing conference was set for April 12, 1991, at which time authorized representatives for Perez and Olympic entered into settlement negotiations off the record with the Transportation Division, and an agreement in principle was reached. Thereafter, further negotiations were conducted by telephone and letter, which resulted in the signing of a stipulation for settlement dated June 23, 1992. The stipulation is signed by authorized representatives for Perez and Olympic and by counsel for the Transportation Division.

In the stipulation Perez agrees to pay the Commission \$2,000 pursuant to Section 3774 of the PU Code. This amount is due 30 days after the issuance of the Commission's final order approving and adopting the terms of the stipulation.

Olympic agrees to pay \$1,000 to be deposited with the Commission, pursuant to § 3804.1 of the PU Code. Olympic also agrees to pay the sum of \$3,250 directly to the Commission pursuant to § 3800 of the PU Code. The total sum of \$4,250 is to be paid in twenty (20) consecutive monthly installments of \$212.50, the first installment due 30 days after issuance of the Commission's final order approving and adopting the terms of this stipulation.

Perez and the Transportation Division agree that the sum of \$3,250 may be paid directly by Olympic to the Commission in lieu of payment through Perez. If the amount of \$3,250 is for any reason not paid to the Commission, Perez agrees to take all reasonable steps including legal action, if necessary, to collect undercharges in the amount of \$3,250 for the transportation of property for Olympic and to pay the sum of \$3,250 to the Commission pursuant to § 3800 of the PU Code.

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 Perez for Olympic 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. John Perez & Sons (Perez), a California corporation, shall pay \$2,000 to the Commission. This amount is due 30 days after the date of issuance of this order.
2. Cooney & McLoughlin Supply, Inc., a California corporation, doing business as Olympic Supply, (Olympic) shall pay \$3,250 directly to the Commission. Olympic shall also pay an amount to be deposited with the Commission in the sum of \$1,000. The total sum of \$4,250 shall be paid in twenty (20) consecutive monthly installments of \$212.50, the first installment due 30 days after the date of issuance of this order.
3. If the sum of \$3,250 is for any reason not paid to the Commission by Olympic, Perez shall take all reasonable steps, including legal action, if necessary, to collect undercharges in the amount of \$3,250 from Olympic; and to pay said sum to the Commission.
4. Upon payment in full of the amounts ordered above, Perez and Olympic shall thenceforth not be subject to any further sanctions or fines arising from transportation performed by Perez for Olympic to and including the date of the stipulation; and Perez

and Olympic 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.

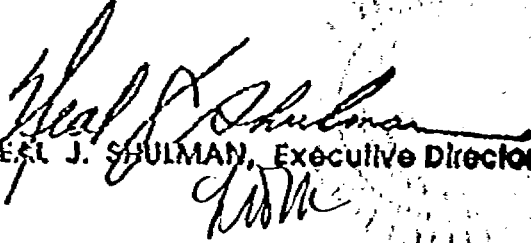
Dated September 2, 1992, at San Francisco, California.

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 JOHN PEREZ & SONS, a)
 California corporation, and of Cooney)
 & McLoughlin Supply, Inc., a California)
 corporation, doing business as)
 OLYMPIC SUPPLY, shipper respondent.)

I. 91-02-077

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 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.

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 PUBLIC UTILITIES COMMISSION
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NOW, THEREFORE, THE PARTIES DO STIPULATE AS FOLLOWS:

1. Respondent John Perez & Sons (Perez) agrees to pay an amount to be deposited with the Public Utilities Commission ("Commission") in the sum of \$ 2,000 pursuant to Section 3774 of the Public Utilities Code. This amount is to be paid within 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 Cooney & McLoughlin Supply, Inc., a California corporation, doing business as, OLYMPIC SUPPLY, (Olympic) agrees to pay an amount to be deposited with the Commission in the sum of \$ 1,000 pursuant to Section 3804.1 of the Public Utilities Code.

3. Respondent Perez and the Commission's Compliance and Enforcement Branch of the Transportation Division (Commission Staff) agree the sum of \$ 3,250 may be paid directly by the shipper respondent Olympic pursuant to Section 3800 of the Public Utilities Code.

4. Respondent Olympic agrees to pay the sum of \$ 3,250 directly to the Commission pursuant to Section 3800 of the Public Utilities Code. The total sum of \$ 4,250 set forth in Paragraphs 2 and 3 is to be paid in twenty (20) consecutive monthly installments of \$ 212.50, the first installment due

30 days after issuance of the Commission's final order approving approving and adopting the terms of this Stipulation For Settlement as its final disposition of the matters subject to this investigation.

5. If for some reason the amount of \$ 3,250 is not paid directly to the Commission, Respondent Perez agrees to take all reasonable steps including legal action if necessary to collect undercharges in the amount of \$ 3,250 for the transportation of property for the shipper respondent Olympic in this proceeding and to pay a sum of \$ 3,250 to the Public Utilities Commission pursuant to Section 3800 of the Public Utilities Code.

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. 91-02-077 be terminated, that the respondents in I. 91-02-077 shall henceforth not be subject to any future sanctions or fines arising from transportation performed by Perez 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 For Settlement.

APPENDIX

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:

June 25, 1972

[Signature]

John Perez, Authorized Representative
John Perez & Sons, Inc.
P.O. Box 525
Clarksburg, CA 95612

[Signature]

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

[Signature]

Michael Cooney
Authorized Representative
Cooney & McLoughlin Supply, Inc.
dba Olympic Supply
4841 83rd Street
Sacramento, CA 95826

(END OF APPENDIX)