

Decision 82 07 027 JUL 7 - 1982

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own)
motion into the operations, rates,)
charges, and practices of NEWMAN)
TRUCKING COMPANY, INC., a California)
corporation, and NEWHALL REFINING CO.,)
INC., a Delaware corporation,)
respondents.)

OII 47
(Filed May 8, 1979)

SECOND ORDER MODIFYING DECISION 93647

By Decision (D.) 93647 issued October 20, 1981 in this proceeding, Newman Trucking Company, Inc. (Newman) was ordered, inter alia, to pay fines to this Commission under Public Utilities (PU) Code Sections 3774 and 3800 on or before the 40th day after the effective date of the order.

Newman entered into a stipulation with the staff providing that the undercharge fine imposed under PU Code Section 3800 should be paid to the Commission as soon as its efforts to collect undercharges from the shipper, Newhall Refining Company, Inc. (Newhall), are concluded, but that in any event, payment of the fine must be made within one year of the effective date of the decision in OII 47, unless an extension of time is requested and granted. We found these terms reasonable, and by D.93874 dated December 15, 1981 modified D.93647 to coincide with the above stipulation.

Under D.93874 payment of the undercharge fine of \$19,347.42 will be due November 27, 1982 unless an extension of time is requested and granted. Payment of the punitive fine of \$2,500 imposed under PU Code Section 3774 was due January 6, 1982.

Counsel for Newman advises by letter dated May 6, 1982 that the carrier is operating in the red. He has provided the

staff with a balance sheet reflecting Newman's recent financial condition. This statement indicates total assets of \$13,375 and total liabilities of \$30,756 as of December 31, 1981. A statement of earnings for Newman's 1981 operations shows a net loss for the year of \$2,638.

Newman's counsel requests, due to the carrier's insolvency, that payment of the undercharge fine be deferred until conclusion of litigation against Newhall. Counsel also suggests that payment of the punitive fine be deferred for a period of approximately one year. He notes that this proceeding is closely related to Order Instituting Investigation (OII) 46, involving our investigation into the operations of another carrier performing similar transportation for Newhall.

In response to our imposition of similar fines in OII 46, the respondent carrier has initiated legal action against Newhall. A summary judgment has been issued in that case. If Newhall does not appeal that judgment, or if an appeal is filed and denied, Newman will also file a motion for summary judgment against Newhall. If an appeal is filed and granted in the related proceeding Newman will move to have its litigation joined with that case since it has a better standing on the court calendar. In that eventuality, it is estimated the matters would go to trial in about two years.

With respect to the punitive fine of \$2,500, Newman's counsel advises that the carrier is not in a financial position to make installment payments. He states that Newman has numerous debts and has had to liquidate most of its equipment.

The staff has no objection to the sought relief. In addition, staff notes that Ordering Paragraph 7 of D.93647 requires Newman to file monthly reports concerning the status of any uncollected undercharges. Since Newman has filed the above legal action, staff suggests modifying this requirement to provide for the filing of a report every six months.

In the circumstances, and because of the potentially protracted legal action against the shipper, Newman's request to modify D.93647 will be granted.

IT IS ORDERED that Ordering Paragraphs 1, 3, and 7 of D.93647 be modified to read as follows:

1. Pay a fine of \$2,500 to this Commission under PU Code Section 3774 on or before July 31, 1983.

3. Pay a fine to this Commission under PU Code Section 3800 of \$19,347.42 within 30 days after conclusion of its litigation against Newhall Refining Co., Inc.

7. File with the Commission by September 1, 1982, and every six months thereafter, a report of any undercharges remaining uncollected, specifying the action taken to collect them and the result of such action, until they have been collected in full, or until further order of the Commission. Failure to file any such report within 15 days after the due date shall result in the automatic suspension of the operating authority until the report is filed.

In all other respects, D.93647 shall remain in full force and effect.

The Executive Director shall have this order personally served upon respondent Newman Trucking Company, Inc. and served by mail upon all other respondents.

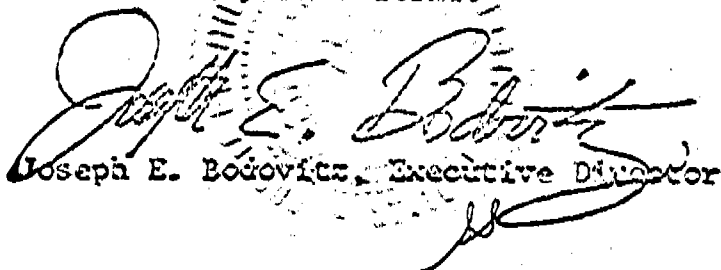
This order shall become effective for each respondent 30 days after the order is served.

Dated JUL 7 1982, at San Francisco, California.

RICHARD D. GRAVELLE
LEONARD M. CRIMES, JR.
VICTOR CALVO
PRISCILLA C. CREW
Commissioners

Commissioner John E. Bryson,
being necessarily absent, did
not participate.

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


Joseph E. Bodovitz, Executive Director