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ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commissions's )  
 own motion into the operations, rates, )  
 charges, and practices of PETE J. )  
 KOOYMAN, an individual, doing business )  
 as PETE KOOYMAN TRUCKING; RALSTON )  
 PURINA COMPANY, a Missouri corporation;) )  
 DOOLAN INDUSTRIES, INC., a Pennsylvania )  
 corporation; and CONSOLIDATED CONTAINER )  
 CORP., a California corporation. )

OII 44  
 (Filed May 8, 1979)

ORDER MODIFYING DECISION 82-05-036  
AND DENYING REHEARING

Pete J. Kooyman dba Pete Kooyman Trucking has filed an application for rehearing of Decision (D.) 82-05-036. We have thoroughly reviewed all of the allegations raised in the application and are of the opinion that good cause for granting rehearing has not been shown. However, upon review, it is concluded that D.82-05-036 should be modified in several respects.

On November 27, 1979, while the hearings in this matter were being held, \$25,679.15 was remitted by the shipper Ralston Purina Company (Ralston) to the Commission in error at the direction of a member of the Commission staff. The staff member accepted a check for this money and the funds were transferred to the State's General Fund. This procedure was improper in that undercharge amounts must be paid to the carrier who in turn remits an equal amount to the Commission as an undercharge fine under Public Utilities Code Section 3800.

We will order our staff to retrieve the \$25,679.15 from the General Fund and return it to Ralston with instructions to issue a new check payable to Kooyman, who in turn, is obligated under Ordering Paragraph No. 1 to pay that amount plus other money owed as undercharge fines for a total \$40,540.82. Therefore,

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IT IS ORDERED that D.82-05-036 is modified as follows:

1. In the Summary of Decision the paragraph entitled "Penalties" is deleted and the following inserted in its place:

Penalties-In all instances carrier is directed to collect undercharges under §3800 of the Public Utilities (PU) Code. Carrier is further penalized by having all his operating authorities suspended for 10 days under PU Code §3774 with an additional 10 days to be imposed if Kooyman violates any of the terms of his operating authority during the following three years. Carrier is directed not to serve Consolidated for an additional period of three months and to cease and desist from further violations.

2. The last sentence of the first incomplete paragraph on page 6 is deleted.
3. The final sentence of footnote 9 on page 15 is deleted.
4. The final paragraph on page 61 continuing on to page 62, is deleted.

5. The final paragraph on page 63 is deleted and the following inserted in its place:

"We conclude that a 10-day suspension of Kooyman's operating authority with an additional 10 days to be imposed if Kooyman violates any of the terms of his operating authority during the following three years is the appropriate punishment in this case. Additionally, we will order that Kooyman not serve Consolidated for a period of three months after the 10-day suspension."

6. The first paragraph on page 64 is deleted.
7. Finding of Fact No. 22 is deleted and the following inserted in its place:

"Subhaulers Keathley, Marchio and Brock each delivered steel to Sun Valley on more than one occasion, despite the fact that the shipping documents listed Van Nuys as the destination. Brock was told by personnel at Consolidated to go to Sun Valley. Keathley and Marchio were

so directed by personnel at Kooyman's."

8. Finding of Fact No. 23 is deleted and the following inserted in its place:

"A fourth subhauler, Leslie, always delivered his load of steel to Van Nuys, as shown on the shipping documents."

9. Conclusion of Law No. 18 is modified to read as follows:

"All of Kooyman's operating authorities should be suspended under P.U.Code §3774 for a period of 10 consecutive days. An additional 10 days will be imposed if, within the next three years following termination of the suspension Kooyman is found by the Commission to have violated the terms of his operating authority."

10. Ordering Paragraph No. 2 is modified as follows: Delete from the first sentence "properly collected from respondent shipper Ralston Purina Company and". After "is ordered to collect from respondent shippers" add "Ralston Purina Company,". In the first sentence the words "having due regard to Conclusion of Law 22 above" are deleted. In the sentence which follows the figures "60" are deleted and the figures "40" substituted therefor.

11. Ordering Paragraph No. 4 is modified by deleting the words "or from using false billing devices."

12. Ordering Paragraph No. 5 is modified to read as follows:

"All operating authorities issued to Pete J. Kooyman are suspended for a period of 10 consecutive days. An additional 10 days will be imposed if the Commission finds that Pete J. Kooyman, at any time within the next three years, has violated any of the terms of his operating authority. If the staff believes Pete J. Kooyman is violating any of those terms, it will seek an Order To Show Cause why the additional 10 days should not be imposed by the Commission."

13. Ordering Paragraph No. 6 is modified by deleting "20-day" and substituting in its place "10-day".

14. Ordering Paragraph No. 7 is added as follows:

"Pete J. Kooyman shall not, by leasing the equipment or other facilities used in operations under his operating authority for the period of suspension, or by any other device, directly or indirectly allow such equipment or facilities to be used to circumvent the suspension."

15. Ordering Paragraph No. 8 is added, reading as follows:

"Pete J. Kooyman shall post at his terminals and station facilities used for receiving property from the public for transportation, not less than five days prior to the beginning of the suspension period, a notice to the public stating that all of his operating authority has been suspended by the Commission for a period of 10 consecutive days, with an additional 10 days to be imposed if Pete J. Kooyman is again found to be violating any of the terms of his operating authority. Within five days after such posting Pete J. Kooyman shall file with the Commission a copy of such notice, together with a statement setting forth the date and place of posting."

16. Ordering Paragraph No. 9 is added as follows:

"The Commission staff is ordered to retrieve from the General Fund \$25,679.15 now held in the account of Pete J. Kooyman. The money is to be returned to Ralston Purina Company with instructions to issue a new check payable to Pete J. Kooyman."

17. Rehearing of D.82-05-036 as modified herein is denied.

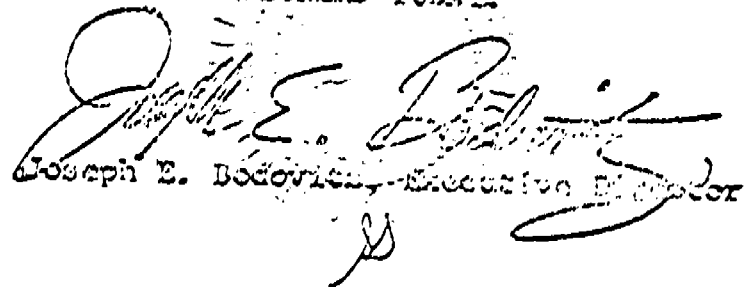
The Executive Director is directed to make personal service of this order upon respondent Pete J. Kooyman and serve by mail all other respondents.

The order shall become effective 20 days after this order is served on respondent Pete J. Kooyman. The 10-day suspension shall begin on the 25th day after this order is served on respondent Kooyman.

Dated SEP 22 1982, at San Francisco, California.

JOHN E. BRYSON  
President  
RICHARD D. GRAVELLE  
LEONARD M. GRIMES, JR.  
VICTOR CALVO  
PRISCILLA C. GREW  
Commissioners

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

  
Joseph E. Bodovick, Executive Director

13. Ordering Paragraph No. 6 is modified by deleting "20-day" and substituting in its place "10-day".

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16. Ordering Paragraph No. ~~47~~<sup>29</sup> is added as follows: ✓

"The Commission staff is ordered to retrieve from the General Fund \$25,679.15 now held in the account of Pete J. Kooyman. The money is to be returned to Ralston Purina Company with instructions to issue a new check payable to Pete J. Kooyman."

17. Rehearing of D.82-05-036 as modified herein is denied.

The Executive Director is directed to make personal service of this order upon respondent Pete J. Kooyman and serve by mail all other respondents.