

ORIGINAL

Decision No. 86776

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 Osborne Highway Express, a California corporation, Georgia Pacific, a foreign corporation, Masonite Corporation, a foreign corporation, Plywood Los Angeles Inc., a corporation.

Case No. 10079
(Filed April 13, 1976)

James H. Gulseth, Attorney at Law,
for Osborne Highway Express,
respondent.

James R. Foote, for Associated
Independent Owner Operators,
Inc., interested party.

William J. Jennings, Attorney at
Law, and Edwin R. Hielt, for
the Commission staff.

O P I N I O N

This is an investigation on the Commission's own motion to determine whether or not Osborne Highway Express, which operates as a radial highway common carrier and contract carrier, violated Sections 3664, 3667, 3668, and 3737 of the Public Utilities Code in performing for-hire transportation of freight for Georgia Pacific, Masonite Corporation, and Plywood Los Angeles, Inc. by charging and collecting from such shippers less than the prescribed minimum rates. The Commission's official file reflects that all parties involved were duly served with copies of the Order Instituting Investigation in this proceeding and the notice of hearing.

At the hearing the following stipulation was entered into evidence, without objection:

"STIPULATION OF FACTS, ISSUES AND RECOMMENDED FINES

"Osborne Highway Express (OHX), as respondent to the above-named action, hereto acknowledges and stipulates that it is in agreement with the staff of the California Public Utilities Commission (Staff) as to the facts, issues and fine recommendations relevant to Case No. 10079 which are listed specifically as follows:

- "1. That respondent (OHX) operates under authority of radial highway common carrier and highway contract carrier permits issued in May 1972; that it subscribes to and has been served with the applicable minimum rate tariffs; that its headquarters are in Berkeley and terminals located in Montebello, Pittsburg and Ukiah. OHX reported gross operating revenues for the year ending June 30, 1975 of \$2,435,405.
- "2. That during 1975 members of the California Public Utilities Commission staff conducted an investigation into respondent OHX's operations, rates, charges and practices. The scope of said review included the transportation listed on the Order Instituting Investigation (OII) of this case.
- "3. That the copies of the shipping documents obtained by staff during said investigation for transportation performed by OHX for Georgia Pacific (attached hereto as Appendix 1), Masonite Corporation (attached hereto as Appendix 2), and Plywood Corporation (attached hereto as Appendix 3) are true and correct.
- "4. That the staff's ratings of the transportation documents for transportation performed by OHX for Georgia Pacific (attached hereto as Appendix 4), Masonite Corporation (attached hereto as Appendix 5) and Plywood Corporation (attached hereto as Appendix 6) are true and correct.

- "5. That the amount of undercharges in Appendix 4 is \$227.59; the amount of undercharges in Appendix 5 is \$624.38; the amount of undercharges in Appendix 6 is \$2,527.60; and these sums are to be collected by OHX pursuant to Ordering Paragraph No. 7 of the OII in Case No. 10079.
- "6. That the total amount of undercharges as reflected in Appendices 4, 5, and 6 is \$3,379.57.
- "7. That the evidence in this proceeding, Case No. 10079, shows falsification of master bills of lading by an employee of OHX.
- "8. That OHX declares that any falsification was the act of an employee of OHX (since terminated) and done without the knowledge, consent or approval of the officers of OHX.
- "9. That under the circumstances of this case, the Commission staff and respondent OHX agree that respondent should be assessed a fine in the total amount of undercharges of \$3,379.57 pursuant to Section 3800 of the Public Utilities Code.
- Commission staff and respondent OHX agree that respondent OHX should be assessed a fine in the amount of \$4,000 pursuant to Section 3774 of the Public Utilities Code.
- "10. That the Commission staff and respondent OHX have entered into this stipulation freely and voluntarily and request that said stipulation be accepted and approved by the examiner in Case No. 10079 and approved by the Commission.

/s/ EDWIN H. HJELT
Edwin H. Hjelt

/s/ GENE OSBORNE
Gene Osborne, President
Osborne Highway Express

/s/ WILLIAM J. JENNINGS
William J. Jennings,
Attorney

/s/ JAMES H. GULSETH
James H. Gulseth
Attorney

FOR COMMISSION STAFF

FOR RESPONDENT

Dated August 31, 1976

Dated August 26, 1976

Official notice, as requested by the attorney for the Commission staff, is taken that on June 12, 1973 Osborne Highway Express paid a \$200 fine to the Commission for credit rule violations and that in Decision No. 83070 dated July 2, 1974 Osborne Highway Express was fined \$4,022 for undercharging various shippers.

Osborne Highway Express, through its counsel, requested that the Commission permit the \$4,000 mentioned in the stipulation to be paid in four equal installments on the first of each month.

The representative of the Associated Independent Owner-operators, Inc. requested that the Commission order Osborne Highway Express, which used subhaulers to haul an indeterminate number of loads involved in the proceeding, to pay those subhaulers their percentage share of the undercharges since the subhaulers involved have a subhaul agreement with Osborne Highway Express calling for 65 percent of the minimum rates.

The Commission finds the facts of the case to be those set forth in the above stipulation and concludes that based on those facts Osborne Highway Express has violated Section 3664, 3667, 3668, and 3737 of the Public Utilities Code, that Osborne Highway Express should be ordered to collect the undercharges involved, should be fined in the amount of the undercharges, and should be fined

punitively in the amount of \$4,000. The Commission has not prescribed division of payments between overlying and underlying carriers on the traffic involved. Where such prescription has been made, we have the authority to enforce payment; otherwise, we do not. In this case we do not have the authority to enforce the terms of a private contract and the subhaulers must resort to the courts.

The Commission expects that Osborne Highway Express will proceed promptly, diligently, and in good faith to pursue all reasonable measures to collect the undercharges. The staff of the Commission will make a subsequent field investigation into such measures. If there is reason to believe that Osborne Highway Express or its attorney has not been diligent, or has not taken all reasonable measures to collect all undercharges, or has not acted in good faith, the Commission will reopen this proceeding for the purpose of determining whether further sanctions should be imposed.

O R D E R

IT IS ORDERED that:

1. Osborne Highway Express shall pay a fine of \$4,000 to this Commission pursuant to Public Utilities Code Section 3774 on or before the fortieth day after the effective date of this order. Osborne Highway Express shall pay interest at the rate of seven percent per annum on the fine; such interest is to commence upon the day the payment of the fine is delinquent, provided, however, that payment of this fine may be made in four equal, consecutive monthly installments beginning the first day of the month following the fortieth day after the effective date of this order and on the first day of each succeeding month until the fine is paid. In the event any installment payment is not paid on or before it is due, then the entire unpaid balance of the fine is immediately due and payable.

2. Osborne Highway Express shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$3,379.57 on or before the fortieth day after the effective date of this order.

3. Osborne Highway Express shall take such action, including legal action, as may be necessary to collect the undercharges set forth in the findings and shall notify the Commission in writing upon collection.

4. Osborne Highway Express shall proceed promptly, diligently, and in good faith to pursue all reasonable measures to collect the undercharges. In the event the undercharges ordered to be collected by paragraph 3 of this order, or any part of such undercharges, remain uncollected sixty days after the effective date of this order, respondent shall file with the Commission, on the first Monday of each month after the end of the sixty days, a report of the undercharges remaining to be collected, specifying the action taken to collect such undercharges and the result of such action, until such undercharges have been collected in full or until further order of the Commission. Failure to file any such monthly report within fifteen days after the due date shall result in the automatic suspension of Osborne Highway Express's operating authority until the report is filed.

5. Osborne Highway Express shall cease and desist from charging and collecting compensation for the transportation of property or for any service in connection therewith in a lesser amount than the minimum rates and charges prescribed by this Commission.

The Executive Director of the Commission shall cause personal service of this order to be made upon respondent Osborne Highway Express and cause service by mail of this order to be made upon all other respondents. The effective date of this order as to each respondent shall be twenty days after completion of service on that respondent.

Dated at San Francisco, California, this 21st
day of DECEMBER, 1976.

[Signature] President
William J. [Signature]
[Signature]
[Signature]
Commissioners

Commissioner Robert Batimovich, being necessarily absent, did not participate in the disposition of this proceeding.