

ORIGINAL

Decision No. 86854

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 AMERICAN TRANSFER CO., a California corporation; STANDARD OIL COMPANY OF CALIFORNIA, a Delaware corporation; WITCO CHEMICAL CORPORATION, a Delaware corporation; MCCORMICK & BAXTER CREOSOTING CO., an Oregon corporation; and INTERPACE CORPORATION, a Delaware corporation.

Case No. 10042
(Filed February 10, 1976)

Handler, Baker & Greene, by Marvin Handler, Attorney at Law, for American Transfer Co.; and Brewer, Patridge & Morris, by William H. Carder, Attorney at Law, for McCormick & Baxter Creosoting Co.; respondents.
James D. Squeri, Attorney at Law, and Ed Hjelt, for the Commission staff.

O P I N I O N

This is an investigation on the Commission's own motion for the purpose of determining, among other related issues: (1) whether American Transfer Co. (American) collected a different compensation from its tariff rates for transportation performed for Standard Oil Company of California (Standard); (2) whether American collected a different compensation from its tariff rates for transportation performed for Witco Chemical Corporation (Witco); (3) whether American charged and collected a lesser rate than the applicable minimum rate for transportation performed for McCormick & Baxter Creosoting Co. (McCormick); and (4) whether American charged and collected a lesser rate than the applicable minimum rate for transportation performed for Interpace Corporation (Interpace). The above named were made respondents to this investigation and a copy of the order instituting the investigation and a copy of notice of hearing were served upon all respondents.

Public hearing was held June 15, 1976 before Examiner Thompson at San Francisco. Following the presentation of evidence and argument by staff and American, and pursuant to agreement among the parties, the hearing was continued to a date to be set to permit McCormick to file with the Commission, and serve upon the parties, such documents and statements relating to the transportation at issue that it may wish to present, and to afford American and staff opportunity to respond or to request further hearing in connection therewith. On July 15, 1976 McCormick filed a copy of a letter addressed to it and dated March 28, 1973 from Pacific Coast Tariff Bureau together with a statement of actions taken by McCormick in reliance on the information set forth in that letter. The letter and the statement are received as late-filed Exhibit 6. American and staff have not made responses to Exhibit 6 nor have they requested further hearing concerning it. The investigation is taken under submission and is ready for decision.

We will discuss the matters at issue under captions for the individual shipper respondents.

Standard and Witco

Staff asserted that upon reevaluation of the evidence it concludes that the rates paid by Standard and those paid by Witco for the transportation involved in this proceeding were not less than the applicable tariff charges. It made a motion to delete Witco and Standard as respondents to this investigation. We will enter a finding that American collected its tariff rates for the transportation described in the order of investigation as having been performed for Standard and for Witco.

McCormick

Three or four years ago the demand for grapes for processing into wine and into raisins increased so significantly that growers increased their plantings of grapes. That, in turn, significantly increased the demand for grape stakes to the extent that it could not be met from domestic sources at prices satisfactory to the growers. Stakes were then imported from the Philippines which required treatment of preservatives. McCormick was engaged in that processing. McCormick negotiated with American for the establishment of commodity rates from San Francisco Bay ports to McCormick's plant at Stockton and from the plant to destination points, and a commodity rate applicable to traffic arriving by vessel at the Port of Stockton and destined to points located within a radius of ten highway miles from Wheeler Ridge with a stop in transit at McCormick's plant for processing. The rates so negotiated were published on behalf of American in Pacific Coast Tariff Bureau Tariff No. 16 (PCTB Tariff 16) and became effective on or about May 5, 1973. Many hundreds of truckloads of grape stakes were transported by American for McCormick under those rates. On February 4, 1975 American transported 7,672 grape stakes weighing 57,600 pounds from McCormick's plant to Beringer Vineyards near Yountville for which it charged and collected the commodity rates specified in PCTB Tariff 16. On March 20, 1975 American transported three truckloads of grape stakes weighing 157,750 pounds from McCormick's plant to vineyards of Louis M. Martini near St. Helena, and on March 21, 1976 transported one truckload weighing 50,440 pounds between the same points, for which it charged and collected the commodity rates specified in PCTB Tariff 16.

American stipulated to all aspects of the staff's case except as to fines. The evidence and argument it presented was only to mitigation of any sanctions or penalties. Insofar as American is concerned, that stipulation establishes that those three shipments were in intrastate commerce, that they were not governed by PCTB Tariff 16, that American transported those shipments as a highway permit carrier, and that the charges for transporting those shipments were governed by the minimum rates established by the Commission in Minimum Rate Tariff 2. There was no other evidence offered showing to the contrary. Although McCormick did not join in that stipulation, the only evidence and argument it presented was to the effect that in its negotiations it had intended that all movements of imported grape stakes moving through its plant for processing and destined to vineyards would be subject to the commodity rates in PCTB Tariff 16, it acted in good faith in connection with the shipments involved herein and upon reliance of the letter of Pacific Coast Tariff Bureau dated March 28, 1973, and at no time did it ever attempt or intend to evade the Commission's regulations or otherwise not comply with the law. It takes the position that as a result thereof it should not be held liable for the claimed undercharges.

On this record we must find that the transportation of the three shipments involved was governed by the rates and rules established by the Commission in Minimum Rate Tariff 2 and that the charges prescribed in that tariff for such transportation total \$1,703.24. We also find that the charges American collected for the transportation amounted to \$923.63 with resulting undercharges of \$779.61. With respect to McCormick's and American's arguments that the circumstances mitigate against the Commission's ordering American to collect the undercharges, we are

bound by the provisions of Section 3800 of the Public Utilities Code which makes such directive mandatory.^{1/} In regard to American's assertion that the evidence showing that the application by it of the rates in PCTB Tariff 16 to the three shipments involved was unintentional and a normal billing error in light of the fact that it transported hundreds of similar shipments of grape stakes from McCormick's plant to other vineyards where the rates in PCTB Tariff 16 were applicable, mitigates against the imposition of an additional fine under Section 3774 of the Public Utilities Code, we are persuaded that such is the case.

Interpace

During the first half of 1975 American transported some 400 truckloads of clay, in bulk, in hopper-bottom dump trucks for Interpace from Ione to Pittsburg. The total weight transported was 10,545.76 tons for which, during the period January through May 5, 1975, American charged \$3.37 per ton and thereafter charged \$3.54 per ton. That was the minimum rate prescribed in Minimum Rate Tariff 7 for the transportation of clay, other than burnt or calcined, for a distance of 70 miles. American and staff stipulated that the commodity was actually calcined clay and that it was transported 77 miles for which the minimum rate was \$4.35 per ton. The resulting undercharges amount to \$9,952.16.

1/ Section 380 (in part):

"Whenever the commission, after a hearing, finds that any highway permit carrier has charged, collected, or received for the transportation of property, or for any service in connection therewith, rates or charges less than the minimum rates and charges applicable to such transportation established or approved by the commission, or has directly or indirectly refunded or remitted in any manner or by any device any portion of such minimum rates or charges, or has paid a commission, without an order of the commission so authorizing, the commission shall require such carrier to collect the undercharges involved and may impose upon the carrier a fine equal to the amount of such undercharges." (Emphasis added.)

American asserts that the mistake in rating was wholly unintentional. The commodity was described on shipping documents by Interpace as "clay" or under a trade name of "Ione A", and it was shipped in pellet form with a high weight density rather than a dry, light powder.^{2/} The average weight per truckload was 26.364 tons. The minimum rate on clay, other than burnt or calcined, is subject to a minimum weight of 23 tons; whereas the minimum rate on burnt or calcined clay (included in the list of lightweight aggregates) is subject to truckload weights not greater than 18 tons.

From the information that a billing clerk would have before him, namely, the commodity description of "Clay" or "Ione A" and the truckload weights of 26 tons or more, the fact that the minimum rates on clay, other than burnt or calcined, were erroneously applied is understandable. In fact, had samples of the commodity been furnished the billing clerk, he would have seen pellets rather than powder or ashes which latter are distinguishing characteristics of calcined material. We are unable to assign any undue negligence to American. A fine provided under the provisions of Section 3774 of the Public Utilities Code is not warranted.

American contends that those same facts mitigate against the collection of the undercharges from Interpace. It asserts that when it learned from the staff that the minimum rates for lightweight aggregates were applicable to the shipments, it filed with the Commission an application seeking authority to charge and assess the lower rates applicable to clay. We take official notice that the authority was granted by the Commission in its Decision

^{2/} Webster's New World Dictionary, College Edition (1966), defines "calcine" as "1. to change to calx or powder by heat. 2. to burn to ashes or powder. 3. to oxidize."

No. 86649 dated November 16, 1976 in Application No. 56771. Just as a subsequently published lower rate does not entitle a shipper to reparations, the fact that a highway permit carrier charged a reasonable rate lower than the established minimum rate does not warrant the Commission's waiving the collection of the undercharges in the light of the specific directive set forth in Section 3800 of the Public Utilities Code (Fn. 1, supra).

We find that:

1. For transportation performed for Standard during the period March 19, 1975 through May 15, 1975, and as more particularly described in the Order Instituting Investigation herein, American charged and collected its applicable tariff rates and charges, including detention charges, provided in Western Motor Tariff Bureau Tariff No. 18.

2. For transportation performed for Witco during the period January 24, 1975 through May 15, 1975, and as more particularly described in the Order Instituting Investigation herein, American charged and collected its applicable tariff rates and charges provided in Western Motor Tariff Bureau Tariff No. 19.

3. It has not been shown that American failed to show required or correct information on shipping documents pursuant to Item 245, Western Motor Tariff Bureau Tariff No. 18 in connection with shipments transported for Standard or Witco.

4. American charged and collected a lesser compensation for the transportation of grape stakes for McCormick during the period February 4, 1975 through March 21, 1975, and as more particularly described in the Order Instituting Investigation herein, than the applicable minimum rates and charges provided in Minimum Rate Tariff 2 and supplements thereto with resulting undercharges of \$779.61.

5. American charged and collected a lesser compensation for the transportation of calcined clay for Interpace during the period January 2, 1975 through June 17, 1975, and as more particularly described in the Order Instituting Investigation herein, than the applicable minimum rates and charges provided in Minimum Rate Tariff 7-A and supplements thereto with resulting undercharges of \$9,952.16.

6. McCormick and Interpace paid less than the applicable minimum rates and charges for transportation performed by American and \$779.61 is now due and owing to American from McCormick and \$9,952.16 is now due and owing American from Interpace for the transportation services described herein.

7. The undercharges resulted from mistakes by American in rating and billing for the shipments transported.

We conclude that:

1. American has not violated Sections 458 or 494 of the Public Utilities Code in connection with transportation performed for Standard and Witco described in the Order Instituting Investigation herein.

2. By its actions in charging and collecting a lesser rate than the minimum rate established by the Commission for transportation performed for McCormick and for Interpace, American has violated Sections 3664, 3667, 3668, and 3737 of the Public Utilities Code.

3. American should be ordered to collect from McCormick and from Interpace the undercharges described herein as required by Section 3800 of the Public Utilities Code.

4. American should be ordered to pay a fine in the amount of the undercharges pursuant to Section 3800 of the Public Utilities Code.

5. No other sanctions or penalties are warranted.

The Commission expects that American 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 American 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. American Transfer Co. shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$10,731.77 on or before the fortieth day after the effective date of this order.

2. American Transfer Co. shall take such action, including legal action, as may be necessary to collect the undercharges set forth in Finding 6 and shall notify the Commission in writing upon such collection.

3. American Transfer Co. 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 2 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 respondent's operating authority until the report is filed.

The Acting Executive Director of the Commission shall cause personal service of this order to be made upon respondent American Transfer Co. 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 17th day of JANUARY, 1977

Robert B. Baker
 _____ President
William J. ...

Leonard ...

 Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.