

Decision No. 87725

AUG 16 1977

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 BERKELEY WAREHOUSE & DRAYING CO., INC., a California Corporation; INDUSTRIAL DRAYAGE, INC., a California Corporation; MACOMBER'S, INC., a California Corporation and MACOMBER'S FOOD PRODUCTS, a California Corporation.

Case No. 10265
(Petition for Modification
filed June 17, 1977)

Investigation on the Commission's own motion into the operations, rates, charges and practices of M & L TRUCKING COMPANY, INC., a California Corporation, MACOMBER'S FOOD PRODUCTS, a California Corporation, MACOMBER'S, INC., a California Corporation, and PAN PACIFIC SCREW AND BOLT COMPANY, a Michigan Corporation.

Case No. 10266
(Petition for Modification
filed June 28, 1977)

ORDER MODIFYING DECISION NO. 87448

In Decision No. 87448 the Commission ordered M & L Trucking Company, Inc. (M & L), to collect undercharges in the amount of \$19,251 from Macomber's, Inc., and Macomber's Food Products (Macomber) and levied a fine against M & L for the same amount pursuant to Section 3800 of the Public Utilities Code. That decision also ordered Berkeley Warehouse and Draying Co., Inc. and Industrial Drayage, Inc. (Berkeley/Industrial) to collect undercharges of \$6,513.01 from Macomber and levied a fine against Berkeley/Industrial for the same amount pursuant to Section 3800 of the Public Utilities Code. The decision permitted the subject fines to be paid in monthly

installments starting August 1, 1977 because the evidence presented at the hearing showed that recovery of the undercharges from Macomber was going to be a very lengthy process. M & L had filed a suit in court against Macomber for the undercharges fourteen months before Case No. 10265 was opened against M & L, and while M & L was vigorously pursuing its case in court Macomber was resisting M & L's claim at every turn thereby delaying the ultimate outcome of the case.

In its Petition for Modification M & L avers that it recovered judgment against Macomber on June 13, 1977 for the amount of the undercharges it was ordered to collect but that attorney for Macomber stated to M & L's counsel that Macomber had no assets to satisfy the judgment and that the United States Internal Revenue Service has filed a lien on Macomber's assets. M & L states that it will continue to pursue the execution of its judgment against Macomber by all reasonable procedures available but that the possibility that the undercharges may never be collected from Macomber now looms as more than mere speculation. Because of these new facts, M & L requests that Decision No. 87448 be modified to limit the payment of the fine levied under Sections 2100 and 3800 to the actual amount of undercharges collected from Macomber. M & L states that it has already expended in excess of \$2,000 in court costs and attorney fees in pursuing the undercharge claim against Macomber.

Berkeley/Industrial's Petition for Modification asks for a similar remission of the fine levied against them covering their undercharges to Macomber. However, their petition does not disclose that they have taken any action against Macomber or that they intend to take any action against Macomber to collect the undercharges or to toll the statute of limitations in the event Macomber has reachable assets. In Decision No. 87448 at page 5 we admonished the carrier respondents that "The Commission expects that Berkeley and/or Industrial and M & L will proceed promptly, diligently, and in good

faith to pursue all reasonable measures to collect the undercharges (including, if necessary, the timely filing of complaints pursuant to Sections 737 and 3671 of the Public Utilities Code)"; in Ordering Paragraph 3 of that decision we ordered that "Berkeley and/or Industrial shall take such action, including legal action, (instituted within the time prescribed by Section 3671 of the Public Utilities Code), as may be necessary to collect the subject undercharges and shall notify the Commission in writing upon collection"; and in Ordering Paragraph 4 of that decision we ordered that "Berkeley and/or Industrial shall proceed promptly, diligently, and in good faith to pursue all reasonable measures to collect the undercharges."

We will modify Decision No. 87448 by deleting Ordering Paragraphs 6 and 12 which have to do with the payments of the fines in installments starting August 1, 1977 and amend as set out below, the wording of Ordering Paragraphs 2 and 8 respecting the amounts of the fines levied pursuant to Sections 2100 and/or 3800 of the Public Utilities Code. However, failure on the part of Berkeley/Industrial to diligently, promptly, and in good faith pursue collection of the undercharges as ordered in Ordering Paragraphs 3 and 4 of Decision No. 87448 could result in a reopening of Case No. 10265 and a reinstatement of the original Ordering Paragraphs 2 and 6 of Decision No. 87448.

IT IS ORDERED that:

1. Ordering Paragraphs 6 and 12 of Decision No. 87448 are deleted.
2. Ordering Paragraph 2 of Decision No. 87448 is amended to read as follows:
 2. Berkeley Warehouse & Draying Co., Inc. (Berkeley) and/or Industrial Drayage, Inc. (Industrial) shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$6,513.01. All or any part of the fine, as the case

may be, shall be due and payable not later than twenty days after the collection by Berkeley/Industrial of all or any part of the subject undercharges. In the event Berkeley and/or Industrial are unable, after exhausting the actions required by Ordering Paragraphs 3 and 4, to collect the entire amount of the subject undercharges then the fine shall be reduced in the amount of the undercharges found to be uncollectible.

3. Ordering Paragraph 8 of Decision No. 87448 is amended to read as follows:

8. M & L Trucking Company, Inc. (M & L) shall pay a combined fine to the Commission pursuant to Public Utilities Code Sections 2100 and 3800 of \$20,892.68. All or any part of the fine, as the case may be, shall be due and payable not later than twenty days after the collection by M & L of all or any part of the subject undercharges. In the event M & L is unable, after exhausting the actions required by Ordering Paragraphs 9 and 10, to collect the entire amount of the subject undercharges then the fine shall be reduced in the amount of the undercharges found to be uncollectible.

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4. With the exception of the amendments contained herein, Decision No. 87448 remains unchanged including the effective dates established for (1) payment of the fine in Ordering Paragraph 7 and (2) the submission of reports in Ordering Paragraphs 4 and 10.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 16th day of August, 1977.

Robert Bateman
President
William S. Gorman
James L. Sturgeon
Charles D. Howell
Clare T. DeLoach
Commissioners