

ORIGINAL

Decision No 88329

JAN 10 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates, and practices of Ralph D.
Jenner, an individual, and Cal-
Forest Lumber Company, Inc., a
California corporation.

Case No. 10405
(Filed August 30, 1977)

Donald H. Hazel, Attorney at Law, for
Ralph Jenner, respondent.
Elmer J. Sjostrom, Attorney at Law, and
E. E. Cahoon, for the Commission
staff.

O P I N I O N

This is an investigation on the Commission's own motion into the operations, rates, charges, and practices of Ralph D. Jenner (Jenner), an individual, for the purpose of determining whether he charged less than the applicable minimum rates in connection with the transportation of lumber for Cal-Forest Lumber Company, Inc. (Cal-Forest).

Public hearing was held before Administrative Law Judge Arthur M. Mooney in Fresno on November 2, 1977 on which day the matter was submitted. Notice of the hearing was sent to all respondents. Jenner was represented by counsel. No appearance was made by or on behalf of Cal-Forest. A written stipulation by Jenner's attorney and counsel for the Commission staff covering all issues in this proceeding was received in evidence as Exhibit 1.

Findings

We find that the following information and data set forth in the stipulation in Exhibit 1 are facts:

1. Jenner operates pursuant to a radial highway common carrier permit. He has an office and terminal at his home in Sanger, employs one driver, operates a tractor and set of flatbed trailers, and has been served with all applicable minimum rate tariffs, distance tables, and exceptions ratings tariffs. For the year 1976, his gross operating revenue was \$99,640, of which \$37,660 was paid to subhaulers.

2. On June 21, 1976 and various days thereafter, a representative of the staff conducted a review of Jenner's operations. The scope of the investigation included the transportation for Cal-Forest between January and May 1976 listed in the order of investigation in this case.

3. The photostatic copies of the freight bills and underlying documents for the transportation in issue included in Appendix 2 to Exhibit 1 are true and correct copies. The signed declaration of Jenner included in the appendix shows the correct origin points for the transportation.

4. The staff ratings of the transportation in issue and the resulting undercharges shown in Appendix 3 of Exhibit 1 are correct.

5. For the transportation summarized in each of the 23 parts of Appendix 3 of Exhibit 1, the undercharge resulted from the improper consolidation by Jenner of separate shipments picked up at different locations as a single multiple lot shipment, and then rating the traffic from one point of origin only. Upon delivery of the freight, Cal-Forest provided Jenner with antedated written pickup instructions showing one point of origin for the multiple location pickups.

6. Jenner charged less than the lawfully prescribed minimum rates in the instances set forth in Appendix 3 of Exhibit 1 in the total amount of \$3,300.88.

7. Decision No. 60396 in Case No. 6420, and Decision No. 64901 in Case No. 7359 involved Jenner as a respondent carrier.

8. Jenner agrees to a fine in the amount of the undercharges plus a punitive fine of \$2,000, payable in monthly installments of \$500 each.

Conclusions:

1. Jenner violated Sections 3664, 3667, 3668, and 3737 of the Public Utilities Code.

2. Jenner should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$3,300.88 and, in addition thereto, should pay a fine pursuant to Section 3774 in the amount of \$2,000, payable in monthly installments of \$500 each.

3. Jenner should be directed to cease and desist from violating the rates and rules of the Commission.

The Commission expects that Jenner 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 Section 3671 of the Public Utilities Code). The staff of the Commission will make a subsequent field investigation into such measures. If there is reason to believe that Jenner or his 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. Ralph D. Jenner shall pay a fine of \$2,000 to this Commission pursuant to Public Utilities Code Section 3774 in monthly installments of \$500 each with the first installment due on or before the fortieth day after the effective date of this order and each subsequent installment due on the same day of each succeeding

month. Ralph D. Jenner shall pay interest at the rate of seven percent per annum on the fine; such interest is to commence upon the day any installment of the fine is delinquent.

2. Ralph D. Jenner shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$3,300.88 on or before the fortieth day after the effective date of this order.

3. Ralph D. Jenner 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 undercharges set forth in Finding 6, and shall notify the Commission in writing upon collection.

4. Ralph D. Jenner 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 Ralph D. Jenner's operating authority until the report is filed.

5. Ralph D. Jenner 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 Ralph D. Jenner and cause service by mail of this order to be made upon the other respondent. 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 10TH
day of JANUARY, 1978.

Ralph B. Berman
President
William J. Agnew Jr.
Vernon L. Stutzman
Charles D. Howell
Clair D. Smith
Commissioners