

ORIGINAL

Decision No. 88676 APR. 4-1978

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 HAL SIMMONS TRUCKING CO., a California corporation; LOUISIANA-PACIFIC CORPORATION, a Delaware corporation; GEORGIA-PACIFIC CORPORATION, a Georgia corporation; COASTAL FOREST PRODUCTS, INC., a California corporation; RAY HILL LUMBER CO., a California corporation; COCA-COLA BOTTLING CO. OF EUREKA, CALIFORNIA, INC., a California corporation; G & R METALS EUREKA, INC., a California corporation; and BRACUT INTERNATIONAL, doing business as BRACUT CO., a California corporation.

Case No. S10207
(Petition filed November 9, 1977)

ORDER EXTENDING TIME

Decision No. 87253 dated April 26, 1977 directed Hal Simmons Trucking Co. (Simmons) to collect \$14,046.08 in undercharges from the captioned shipper respondents and to pay a fine in the amount of the undercharges as well as a punitive fine of \$2,500 and delinquent fees and penalty of \$76. The fines were due and payable on or before June 28, 1977. Payment of the \$2,500 punitive fine and delinquent fees was received on June 29, 1977. Payment of \$6,326.78 of the undercharge fine was received in four installments extending from June 9, 1977 to September 22, 1977. The remainder (\$7,719.30) of the undercharge fine has not been paid. By Decision No. 87555 dated July 6, 1977 the Commission approved a requested 30-day extension of time in connection with Ordering Paragraphs 2 and 6 of Decision No. 87253. On July 6, 1977, by Decision No. 87566, the Commission denied a petition for rehearing filed by Louisiana-Pacific Corporation.

By Petition for Modification of Order and Supplemental Order, Simmons requests that Ordering Paragraph 2 of Decision No. 87253 quoted as follows:

"2. Hal Simmons Trucking Co. shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$14,046.08 on or before the fortieth day after the effective date of this order."

be modified to read as follows:

"2. Hal Simmons Trucking Co. shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 in the sum of \$14,046.08, payable as each and every part of said sum is collected by Hal Simmons Trucking Co. in compliance with the directives of paragraphs 5 and 6 of this order."

The petition, in part, is based upon the carrier's statement that "actions against Coastal Forest Products, Inc., Bracut International, and G & R Metals, Inc. are being prepared to file" to collect the remaining undercharges of \$7,719.30. In this respect, the staff determined from Simmons' attorney of record that as of February 27, 1978 no suits had been filed despite the precautionary language in Decision No. 87253 concerning the timely filing of complaints pursuant to Section 3671 of the Public Utilities Code.

Findings

1. Payment of a fine under Section 3800 of the Public Utilities Code is not conditioned on the prior collection of undercharges.

2. The date for payment of the fine due under the requirements of paragraph 2 of Decision No. 87253, as extended by Decision No. 87555, should be further extended to May 15, 1978.

The Commission reminds the carrier that this proceeding may be reopened to determine whether further sanctions should be imposed if the carrier or its attorney fails to heed the precautionary language in Decision No. 87253. Inability to collect the undercharges because of failure to timely file complaints pursuant to Section 3671 of the Public Utilities Code shall not excuse the carrier from his responsibility to pay the fine required by Section 3800.

IT IS ORDERED that:

1. Ordering Paragraph 2 of Decision No. 87253, as modified by Decision No. 87555, is further modified to provide that the fine specified therein shall be paid in full by May 15, 1978.

2. In all other respects, Decision No. 87253 shall remain in full force and effect.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 4th
day of APRIL, 1978.

Robert Bateman
President
William J. Gannon
Veronica S. Strayhorn
Richard D. Howell
Clair J. Schick
Commissioners