

ORIGINAL

Decision No. 88882 MAY 31 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 PELLCO TRUCKING, INC., a California corporation; JOHN LENORE & CO., a California corporation; SOUTHLAND BEVERAGE DIST., INC., a California corporation; MID-CITY BEVERAGE DIST., INC., a California corporation; MARKSTEIN BEVERAGE CO. of SACRAMENTO, a California corporation; ROY A. ROSENBERGER, BRUNO ROVEDA and JOHN ROVEDA, a partnership dba UNITED BEVERAGE DISTRIBUTORS; and LOUIS ROSSI dba ROSSI DISTRIBUTING COMPANY, a sole proprietorship.

Case No. 9954
(Filed August 5, 1975)

Handler, Baker and Greene, by Daniel W. Baker, for Pellco Trucking, Inc., respondent.

James T. Quinn, Attorney at Law, and E. E. Cahoon, for the Commission staff.

O P I N I O N

On August 5, 1975, the Commission instituted an investigation into the operations, rates, charges, and practices of Pellco Trucking, Inc. (Pellco), a California corporation, for the purpose of determining whether Pellco may have violated Public Utilities Code Sections 3664, 3667, 3668, and 3737 in the transportation of beer for John Lenore & Co. (Lenore) of San Diego; Southland Beverage Dist., Inc. (Southland) of Long Beach; Mid-City Beverage Dist., Inc. (Mid-City) of Long Beach; Markstein Beverage Co. of Sacramento (Markstein); Roy A. Rosenberger, Bruno Roveda, and John Roveda, a partnership, dba United Beverage Distributors (United), in Oakland; and Louis Rossi, dba Rossi Distributing Company, (Rossi) of San Francisco.

It was alleged that respondent Pellco provided transportation services at less than the applicable and lawful minimum rates in violation of certain tariff provisions as noted below:

- "A. For respondents Lenore, Southland, Markstein, United and Rossi: Failing to pick up Multiple Lot Shipments within the time allowed, thereby not complying with Items 60 and 85 of Minimum Rate Tariff No. 2 (MRT-2).
- "B. For respondents Lenore, Southland, United and Rossi: Picking up loads prior to the issuance of required documentation, thereby not complying with Items 60 and 85 of MRT-2.
- "C. For respondents Lenore, United and Rossi: Adding separate shipments to Multiple Lot Shipments without required documentation from consignor, thereby not complying with Items 60 and 85 of MRT-2.
- "D. For respondents Lenore and Markstein: Improperly combining loads to form a Multiple Lot Shipment without required documentation, thereby not complying with Items 60 and 85 of MRT-2.
- "E. For respondent Southland: Improperly combining loads to form a Split Delivery Shipment without required documentation from consignor, thereby not complying with Items 60 and 172, Paragraph 2, of MRT-2.
- "F. For respondents United and Rossi: Billing components of Multiple Lot Shipments as if delivered to one location when actually one component of each shipment was delivered to a separate, off-rail destination, thereby not complying with Items 60, 85 and 172 of MRT-2.
- "G. For respondents United and Rossi: Failing to assess MRT-2 rates to off-rail points of destination, thereby not complying with Items 210, 507 and 510 of said MRT-2.

- "H. For respondents Lenore, Southland, Mid-City, Markstein and United: Failing to assess accessorial charges for loading, thereby not complying with Item 240 of MRT-2.
- "I. For respondents Southland, Mid-City and Rossi: Failing to assess applicable switching charges, thereby not complying with Item 200 of MRT-2.
- "J. For respondent Lenore: Failing to assess off-rail charges when such were applicable per Item 415 of MRT No. 9-B and failing to utilize Items 506.5 and 508 of MRT-2 when such were applicable, rather than rail/off-rail combinations."

The proceeding was submitted on briefs after 16 days of hearing extending from November 6, 1975 to June 9, 1976. A motion to strike and the reply thereto extended the period of submission to October 15, 1976. Evidence was presented by the Commission staff and by respondent Pellco.

Pellco operates as a radial highway common carrier and under a dump truck carrier permit. The Commission records show that Minimum Rate Tariffs 2 (MRT 2) and 9-B were served on Pellco, along with Exception Ratings Tariff 1 and Distance Table 7. During November 1975 Pellco employed 9 drivers and operated 9 tractors and 16 nonrefrigerated vans at Sonoma, California. Pellco's gross operating revenue for 1974 was \$549,420.

Lenore

A staff representative testified that his investigation was started on June 24, 1974 at Pellco's office in Sonoma. He returned on October 10, 1974 to copy certain documents and on November 19, 1974 to talk to Mr. Pellandini, president of Pellco. Respondent shippers will be considered individually to simplify the charges and evidence. The evidence against Lenore concerns 33 shipments of beer; and 12 shipments of kegs, bottles, and pallets returned from Lenore in San Diego to Theo Hamm in San Francisco. The representative testified that Mr. Pellandini told him

that in July and September of 1974 the 33 beer shipments destined for Lenore were delivered to a Southern Pacific Transportation Company (SP) team track in San Diego, where the loaded trailer was disconnected from the Pellco van and hauled away by the consignee's tractor to the latter's warehouse which was off rail. Pellandini also told the witness that his empty vans are returned to the team track by the consignee, hooked to Pellco tractors, and returned to the Bay Area. He advised that Pellco keeps an empty van at the team track at all times.

The staff witness testified that he visited the San Diego team track on December 10, 1974 and saw no Pellco vans or tractors. He talked to a representative of San Diego and Arizona Eastern Railway (SD&AE) and was advised that trucks are not allowed to use or park on railroad facilities unless they are involved in loading or unloading box cars. The railroad's chief clerk employed at the team track was called by the staff and corroborated this testimony. He testified that (1) he supervised 20 employees of whom 12 worked in the immediate San Diego area, (2) he was on duty during the day, five days a week, although the team track is open all weekend, with the exception of six hours early on Sunday, (3) there are several large vacant lots next to the track which are accessible from the street. The Lenore employed warehouseman, who receives and delivers merchandise for Lenore at its San Diego warehouse (1250 Delevan Drive), was also called by the staff. He testified that (1) with the exception of about two weeks in early March 1974, when Pellco first commenced hauling for Lenore, all loads of beer were delivered by Pellco to the Lenore warehouse, (2) shipments of empties returning to Hamm's were also picked up by Pellco at the Lenore warehouse. Documentary evidence (signed carrier delivery records) shows that the warehouseman witness received approximately two thirds of the loads of beer inbound to Lenore (53 of 80 loads) and signed out about 70 percent (9 of 13 loads) of the outbound shipments of empties returning from Lenore to

Hamm's. Commission staff cross-examination of witness Pellandini and rebuttal testimony by staff witness Hunziker developed, from documentary evidence covering certain carrier delivery receipts, a sequence of southbound and northbound movements of specific tractors, trailing equipment, and drivers. This evidence disclosed that the trailers could not have been exchanged at the SD&AE team track in connection with the referenced shipments. The staff rate expert considered all of these shipments as off rail on the basis of the information that Pellco hauled the trailers directly to the Lenore warehouse (off rail) in San Diego.

Pellco presented three men who drove for respondent during the March to June 1974 period when the loads were hauled to Lenore. All testified they left the Pellco terminal in Sonoma about noon, drove to Hamm's in San Francisco, and after the vans were loaded proceeded directly to the team track in San Diego, arriving from midnight to 4:00 a.m. the following morning. The drivers testified that they phoned Lenore about an hour before reaching San Diego and the latter's tractor and empty trailer were waiting when they arrived. One driver testified the vans were parked in a vacant lot next to the track while the trailers were transferred. Pellco's evidence indicates if a truckload contained six or less pallets of kegged beer, they were loaded by Hamm's forklift and no assistance was provided by a Pellco employee. If the truck contained more than six pallets of kegged beer, assistance of an employee of Pellco was required to load all pallets other than the last six placed at the end of the trailer. A Pellco employee was required to position such pallets in the trailer with a pallet jack. Pellco's witness also testified that Hamm's beer was sold f.o.b. at the San Francisco plant and Hamm's would not pay for the loading because title supposedly passed to the consignee before the beer was loaded. The consignee-distributors also refused to pay loading charges since the brewery actually loaded the beer.

The staff argued that Lenore was off rail and an off-rail charge should be added to the applicable rail rate to cover the transportation from The Atchison, Topeka and Santa Fe Railway Company (AT&SF) spur in San Diego to the shipper's premises. The staff claims Pellico should have charged for loading the vans (loading accessorial charge, Item 240, MRT 2).

Pellico filed a Motion and Petition to Waive Portion of Charges on May 18, 1976 to request that if the Commission finds loading charges are due and must be collected under Item 240 of MRT 2, all charges be waived on that portion of each shipment of kegged beer which was loaded without the assistance of Pellico's personnel. This request is based on the argument that to do otherwise will impose charges which "are unreasonable, excessive and unjust". Pellico emphasized that the staff assessed the loading charges on all loads (2 to 4) of a master-billed shipment (Southland) where only a small portion (one pallet of 1,884 pounds in a 232,989-pound shipment, Exhibit 10, Volume III, Section 2, Part 1) was kegged beer. The evidence shows that all 21 shipments set forth in Section 2, Exhibits 9, 9-A, and 43 included substantial amounts of kegged beer ranging from 43,656 pounds to 135,648 pounds in each shipment. Contained within Section 2 of staff's Exhibit 3 is prima facie evidence in the form of copies of bills of lading with notations showing "Power Loaded With Carrier Assistance", "Power Loaded Without Carrier Assistance", or "Keg Beer Loaded With Carrier Assistance".^{1/} This evidence together with testimony disclosing the required assistance of Pellico employees to position all pallets of kegged beer other than the last six placed at the end of the trailer and the requirement of Teamster agreements that carriers have a lumper present (Pellico employee) to assist in the loading of kegged beer,

^{1/} Similar notations are also on the documentation for Southland, Mid-City, Markstein, and United Beverage. The total actual weight of all the kegged beer is 2,710,576 pounds.

requires the application of accessorial loading charges pursuant to the tariff rule established by the Commission in Item 240, MRT 2. In responding to the question as to the weight basis upon which the accessorial loading charges should be assessed, Paragraph 2 of Item 240, MRT 2, provides "A charge of 5-1/2 cents per 100 pounds shall be assessed on the weight on which transportation charges are determined..." (Emphasis added.) The type of ruling sought by Pellco's "motion" to waive a portion of the loading charges has previously been brought before the Commission in a formal proceeding and was denied (Case No. 5432, Petition for Modification No. 474, Decision No. 73685, 68 CPUC 3 (1968) (unreported)). An adversary proceeding is not the proper forum to attempt to secure a deviation from a tariff rule on a retroactive basis. Pellco's "Motion and Petition to Waive Portion of Charges" should be denied.

The Lenore shipment involved two additional rating problems. In Exhibit 9, as amended by Exhibit 9-A, the staff rated the San Francisco to San Diego shipments under the alternative application of rail rates as if they moved via AT&SF to San Diego, then via local truck rates in MRT 9-B to the Lenore warehouse (off rail). The staff's Exhibit 43, which rates the shipments as if routed via AT&SF to the interchange with SD&AE in San Diego, and then via SD&AE to the team track, was to apply only if the Commission were to consider the shipments as having been delivered to the team track. In response to Pellco's rating of the traffic via SP to El Centro, then over SD&AE to San Diego, with destination at SD&AE team track, the staff rate expert testified that SD&AE traverses Mexico between El Centro and San Diego. It is, therefore, interstate carriage and SD&AE's rates are interstate between these points and cannot be used in the alternative application of rail rates for the traffic at issue. The rate expert's position was supported by staff Exhibits 38, 39, and 40. Exhibit 38 is an excerpt from Decision No. 79937 in Case No. 5432, Petition for Modification No. 621, which eliminated the use of interstate and foreign rates under the alternative application provisions of MRT 2. Exhibit 39 is an excerpt from the Interstate Commerce Act establishing the application of that Act to common carriers

by railroad "from any place in the United States through a foreign country to any other place in the United States". Exhibit 40 is Item 10, Definition of Technical Terms, from MRT 2 which restricts common carrier rate as intrastate rates. The two rate experts presented by Pellico disagreed with the staff position. They computed a rating by SP to El Centro, then over SD&AE to San Diego, with destination at SD&AE team track. The Pellico rate experts testified that the rail tariff used did not identify the rate over SD&AE as an interstate rate (respondent showed that interstate rates were identified by a special symbol) and that Items 200 and 210 of MRT 2, in effect when the transportation was performed, provides that common carrier rates, except rates of coastwide common carriers by vessel may be assessed for this transportation without any other applicable qualification.^{2/}

The 12 parts in Exhibit 9, Section 3, consist of the transportation of empty bottles, kegs, and pallets from Lenore in San Diego back to Hamm in San Francisco. The staff applied an MRT 2 rate from the Lenore premises, which are off rail, to the Hamm's plant in San Francisco. Pellico applied a rail rate from SD&AE team track to Hamm's plant. Pellico's rate experts argued that pallets should have been returned without charge under the provisions of Item 165-C of PSFB Tariff 300-A (Exhibit 46). The staff contested the application of Item 165-C on the basis that the required shipping documents were never prepared.

^{2/} While the rate in question does not bear the symbol meaning "Applies on interstate traffic only", it does bear a footnote, ("F85"), which means "Applies from and to points named only. Published under authority of Public Law 85-99 (71 Stat. 292)". It is noted that had the railroad wished to publish such a provision in connection with a California intrastate rate, it would first have been necessary to obtain permission from the Commission to depart from the provisions of Section 460, Public Utilities Code. It is further noted that the railroad did not do so, but that instead it cited federal authority for its action.

Two of the Lenore shipments include alleged violations of Item 85 of MRT 2. On Section 1, Part 12 of Exhibit 9, shipping documents indicate pickups on June 10 and 11, 1974. The master freight bill is dated June 10, 1974. Section 2, Part 21 of the same exhibit has pickups on June 10, 12, and 13, 1974 and the master bill dated June 13, 1974.

Findings on Lenore

1. With the exception of Parts 1, 3, 6, 7, and 10, Section 1 and Parts 12, 16, and 17, Section 2 of Exhibit 9, and Parts 1 and 5, Section 2 of Exhibit 9-A, the Lenore shipments were delivered on rail to the SD&AE team track.

2. The excepted "Parts" referred to in Finding 1 were delivered off rail to the Lenore warehouse, San Diego.

3. On shipments of beer loaded entirely or in part with the assistance of carrier personnel, Pellco failed to assess accessorial charges based on the weight on which transportation charges were determined in violation of Paragraph 2, Item 240, MRT 2 (Parts 1 through 21 of Section 2, Volume I, Exhibits 9, 9-A, 43).

4. The rail rate relied upon by Pellco, involving routing via SD&AE between El Centro and San Diego is an interstate rate. As such it is not a "common carrier rate" as defined in Item 10, MRT 2, and cannot be used under alternative application of common carrier rates.

5. A proper rail rate could be assessed to the transportation represented by the 12 parts of Section 3 of Exhibit 9; however, lower charges result from the application of rates in MRT 2. There is no evidence that the documentation required by Item 165-C, PSFB 300-A, was provided.

6. There is a violation of Item 85 of MRT 2 in Section 1, Part 12, Exhibit 9, since the entire shipment was not picked up in one day. A second shipment (Part 21, Section 2) includes the same violation and one additional since two loads were picked up before the multiple lot document was issued.

7. The correct ratings and undercharges are in the following exhibits:

Section 1, Volume I - Parts 2, 4, 5, 8, 9, 11, Exhibit 43.
Parts 1, 3, 6, 7, 10, 12, Exhibit 9.

Section 2, Volume I - Parts 2, 3, 4, 6, 7, 8, 9, 10, 11,
13, 14, 15, 18, 19, 20,
Exhibit 43.

Parts 1, 5, Exhibit 9-A.
Parts 12, 16, 17, 21, Exhibit 9.

Section 3, Volume I - Parts 1 through 12, Exhibit 9.

8. The total amount of Lenore undercharge is \$9,181.20.

Southland

There are alleged undercharges on 24 counts involving the transportation of beer from the San Francisco plant of Theodore Hamm Company to Southland warehouses in the city of Industry, San Bernardino, Anaheim, and Los Angeles. The staff lists a failure to assess off-rail charges, loading charges, switching charges, per-car charges, and stop-in-transit charges; loads were combined into split delivery shipments without proper documentation from the consignor; loads were picked up prior to the issuance of a single multiple lot document; and multiple lot shipments were not picked up in one day as required. (The one-day period is extended to two days when carrier's trailers are left for loading without a tractor or driver present (Item 85, 4.b.1. MRT 2).)

Loading charges on kegged beer have already been discussed and apply to 12 shipments transported for Southland. The staff position on multiple lot and split delivery is based on a lack of proper documentation in the carrier's records. A staff witness emphasized that many of the carrier's documents had pencil entries or erasures which were not on the same documents obtained from the shipper's records. Pellco's witnesses advised that the carrier occasionally left loaded trailers until the following morning after loading was completed. The shipping documents list the date on which loading is completed; if there were changes in loading - certain

items not available or convenient to load - the warehouseman would note the change in pencil on the document sent with the carrier. This alteration may not be on the shipper's copy of the document for several reasons. Pellico further claimed that a purchase order was received from Hamm's about three weeks before each shipment moved (Exhibit 20), which listed the commodity and quantity, consignor and consignee, carrier, shipping date, and order numbers. This purchase order also identifies split delivery shipments by individual consignee and destination. Pellico claims the purchase orders satisfy all of the documentation requirements for split delivery. The staff's evidence discloses that split delivery instructions were not shown on the documents in connection with Part 1 of Section 1, Volume II, and Parts 1 and 2 of Section 5, Volume III (no cross reference was made to the city of Industry as a point of destination in the master bill issued for Part 2 of Section 5, Volume III, and no master bills were issued for the other two referenced parts). The staff treated Parts 1 and 2 of Section 5, Volume III, as two separate shipments both rated at rail rates routed via SP and Union Pacific, one shipment to Anaheim and one shipment to the city of Industry. A truck rate was not involved. Pellico's rate expert's supplemental ratings were "SP to Santa Fe to Anaheim, then transported single load of each shipment to City of Industry via truck". With one exception, Paragraph (b) of Item 210, MRT 2 (Exhibit 44), does not permit such a rating based upon less than the total weight of the shipment for the off-rail portion. The only exception is when a separate shipment is made from a point on the split delivery route, with written instructions and "re-rate charge" per Paragraph 5 of Item 172, MRT 2 (written instructions for re-rating were not made). Pellico's evidence indicates that the shipping documents were received during the afternoon before the day of pickup and that supplementary oral instructions were given at this time.

Pellco's dispatch records indicate that all shipments were picked up within a two-day period. A staff representative testified there were no purchase orders with the carrier's records when the staff investigation was made. Pellco's witness testified that the extra documents may not have been requested by the staff witness and therefore were not produced.

The evidence is conflicting with respect to the alleged multiple lot rule violations concerning Part 5 of Section 1, Volume III, and Part 6 of Section 2, Volume III. The doubt should be resolved in favor of respondent Pellco.

Parts 1 and 2 of Section 4, Volume III, Exhibit 10-A, cover shipments from Hamm's in San Francisco with a portion destined to Mid-City in Los Angeles and the remainder consigned to Southland at Anaheim. Pellco assessed a rail rate, stop-in-transit charge, and applicable surcharge for each shipment. Again, Pellco's rate expert's supplemental ratings were "SP to Santa Fe to Anaheim destination, then by one load by truck to Los Angeles". (Written instructions for re-rating were not made.) As previously noted such a rating based upon less than the total weight of the shipment for the off-rail portion is not permitted pursuant to Paragraph (b) of Item 210, MRT 2. The staff's rating for Part 1 involves a combination of rates, including per-car charges from Los Angeles to Mid-City, located between Wildasin and Hyde Park stations on the AT&SF, and back to Los Angeles, on the basis that Mid-City's location is not intermediate between San Francisco and Anaheim. The staff rated Part 2 as three separate shipments, alleging that two loads were picked up the day prior to issuance of the master bill of lading.

Findings on Southland

1. On shipments of beer loaded in part with the assistance of carrier personnel, Pellco failed to assess applicable accessorial charges based on the weight on which transportation charges were determined in violation of Paragraph 2, Item 240, MRT 2. (Parts 1, 2, and 3, Section 1, Volume II, Exhibits 10 and 10-A; Parts 2, 3, 4, 6, and 7, Section 2, Volume III, Exhibit 10; Part 1 of Section 3,

Volume III, Exhibit 10-A; Parts 1 and 2, Section 4, Volume III, Exhibit 10-A; Part 3 of Section 5, Volume III, Exhibit 10-A.)

2. Pellico failed to assess an off-rail charge on Part 3, Section 5 of Exhibit 10-A in violation of Paragraph (b), Item 210, of MRT 2. (The rating in Exhibit 10-A is correct.)

3. On Part 1 of Section 1, Volume II, Exhibit 10, and Parts 1 and 2 of Section 5, Volume III, Exhibit 10, Pellico combined loads to form split delivery shipments without proper documentation, in violation of Paragraph 2, Item 172 of MRT 2. (The undercharges in the foregoing parts of Exhibit 10 are reduced, respectively, from \$178.79 to \$145.79--from \$225.98 to \$90.71--from \$201.27 to \$168.27.)

4. Pellico has failed to assess a stop-in-transit charge in violation of Item 200 of MRT 2. (Part 3, Section 1, Volume II, Exhibit 10-A.)

5. The staff's ratings in Exhibit 10 for Parts 1, 2, 3, 4, 6, and 7 of Section 1, Volume III, and for Parts 2, 3, 4, and 7 of Section 2, Volume III; and in Exhibit 10-A for Part 1 of Section 3, Volume III, and Parts 1 and 2 of Section 4, Volume III, are correct.

6. On Part 5 of Section 1, Volume III, and Part 6 of Section 2, Volume III, Exhibit 10, Pellico picked up within the time period required by Item 85 and after the issuance of the required documentation in compliance with Item 85 of MRT 2. (The undercharges in the foregoing parts of Exhibit 10 are reduced, respectively, from \$201.40 to \$26.94--from \$143.37 to \$110.12.)

7. With the exception of Part 3, Section 5, Volume III, Exhibit 10-A, Pellico failed to assess switching charges to all other parts in Sections 1 through 5, Volume III, in violation of Item 200, MRT 2.

8. The undercharges in Parts 2, 3, and 4 of Section 1, Volume II, Exhibit 10-A, are reduced, respectively, from \$88.18 to \$61.08--from \$140.12 to \$113.02--from \$124.21 to \$19.71. The

undercharges in Parts 1 and 5, Section 2, Volume III, Exhibit 10 are reduced, respectively, from \$155.08 to \$26.94--from \$90.53 to \$12.58.

9. The total amount of Southland undercharge is \$2,923.93.
Mid-City

These alleged violations concern the transportation of seven loads of beer from Hamm's brewery in San Francisco, which is on an SP rail spur to Mid-City in Los Angeles, served by an AT&SF spur track. The staff and respondent's rate experts agree on the rates to be charged, except the latter imposed a loading charge only where the beer was loaded with carrier assistance. The staff applied the loading charge to the entire shipment if any portion of it was loaded with carrier assistance. The staff maintains that current tariff interpretation requires it.

Findings on Mid-City

1. On shipments of beer loaded in part with the assistance of carrier personnel, Pellco failed to assess accessorial charges based on the weight on which transportation charges were determined in violation of Paragraph 2, Item 240 of MRT 2. (Applicable to Parts 2, 3, 5, and 6, Section 2, Volume IV, Exhibit 11-A).

2. Pellco has failed to assess the applicable per-car charge in violation of Item 200 of MRT 2. (Part 1, Section 1, Volume IV, and Parts 1 through 6, Section 2, Volume IV, Exhibit 11-A.)

3. With the exception of Parts 1 and 4, Section 2, Volume IV, the correct rates are listed in Exhibit 11-A. (The undercharge in Part 1 is reduced from \$97.86 to \$21.28 and from \$98.61 to \$21.28 in Part 4.)

4. The total amount of Mid-City undercharge is \$505.61.

Markstein

These allegations are concerned with the transportation of 23 loads of beer from the Hamm brewery in San Francisco to Markstein of Sacramento. The undercharge violations consist of failures to impose loading charges, which the staff applied to the entire shipment if all or any portion of it was loaded with carrier assistance.

Findings on Markstein

1. On shipments of beer loaded entirely or in part with the assistance of carrier personnel, Pellco failed to assess accessorial charges based on the weight on which transportation charges were determined in violation of Paragraph 2, Item 240 of MRT 2.

2. Parts 2, 4, 10, 12, 13, 15, 19, and 21 of Section 1, Volume V, Exhibit 12, do not have undercharges as carrier loading assistance was not provided.

3. With the exception of the parts identified in Finding 2, the correct ratings are those in Section 1, Volume V, Exhibit 12.

4. The total amount of Markstein undercharge is \$402.22.

United

This portion of the investigation involves the transportation of 37 shipments of beer for the United account. Section 1 concerns the movement of eight loads from the Hamm brewery in San Francisco to the United warehouse in Oakland. The alleged violation is a failure to assess a loading charge on the total weight of each of the shipments. Pellco admits that it failed to impose any charge for loading the beer and argues that the charge should only be applied to that portion of beer actually loaded with the carrier's assistance. Pellco's rate expert filed corrected ratings as a part of the alternative billings previously referred to and identified.

On the eight parts of Section 2, which are concerned with the transportation of beer from the Joseph Schlitz brewery in Van Nuys to United in Oakland, the staff alleges the following violations: loads picked up prior to issuance of single multiple lot document (Item 85) on Parts 1, 2, 3, 5, 6, and 7; multiple lot shipment not picked up in two days (Item 85) on Parts 2, 3, and 8; and an additional load added to the multiple lot shipment without required documentation from the consignor (Item 85) on Parts 4 and 8.

Pellco's president testified that the Schlitz brewery advised the carrier of content, weight, and destination of loads three weeks in advance, as did Hamm's. Shipping documents were

prepared by Schlitz on the day prior to pick up. There was no possibility of a load being picked up or added to a shipment without documentation from the consignor. Pellico also had difficulty at this time with a clerk from the Schlitz warehouse who was careless in making out shipping documents and frequently neglected to properly identify loads or date, or to give other required information. Trailers were occasionally loaded and left overnight or longer, and loaded trailers were left while other loads were hauled first. This practice made it appear that shipments extended over several days, since shipping documents were completed when the trailer was loaded not when it was connected to the tractor. He advised that loads were not added without documentation, original shipping documents were received well in advance and frequently had to be altered as loads were being prepared, and old shipping order numbers were lined out and new order numbers inserted.

The third section of Exhibits 13 and 13-A includes hauls between the same consignor and consignee (United). On all 19 counts the staff alleges that the point of destination was not shown on the freight bill, bill of lading, or multiple lot document; also that a split delivery was performed without proper documentation from the consignor. The freight bills and other shipping documents indicate that the beer was delivered to the United facility in Oakland, although the freight bills usually include a note in handwriting "delivered to Hayward warehouse". The Oakland facility of United is on rail; the Hayward facility is not.

Pellico provided the following testimony: United employees were on strike during the period this transportation was performed. Pellico transported the loads to 3rd and Jackson Streets in Oakland by agreement, until instructions were received to deliver the loads to the Oakland warehouse at 1st and Jackson or to the Hayward warehouse. If a part of the carrier-billed shipment was destined to Hayward, it was transported to 1st and Jackson where the Oakland portion of the carrier-billed shipment was unloaded, then a United tractor was used to haul the Pellico trailer to United in Hayward.

This was done about 2:00 a.m. in the morning, due to the strike. It was agreed that loads would be delivered during the strike from 6:00 p.m. to 6:00 a.m. The tractor was driven to Hayward by Pellco's president or other employees. Pellco considered that the load had been delivered in Oakland and that the transport to Hayward was a favor necessitated by the strike of United employees. Respondent's rate expert considered the transportation from the Oakland warehouse to Hayward as a separate truck shipment and rated it as such. The staff rate expert considered the Hayward deliveries as separate shipments inasmuch as the transportation did not qualify for split delivery privileges because of failure to have documentation required by Paragraph 2, Item 172, MRT 2.

Other alleged violations are that loads were picked up prior to issuance of a single multiple lot document (Exhibit 13, Section 3, Parts 8 and 12); that the shipment was not picked up in two days as required (Section 3, Parts 9, 10, and 12); that an additional load was added to a multiple lot shipment without the required documentation (Section 3, Part 10).

Findings on United

1. On shipments of beer loaded in part with the assistance of carrier personnel, respondent Pellco failed to assess accessorial charges based on the weight on which transportation charges were determined in violation of Item 240 of MRT 2 (Parts 1 through 8, Section 1, Exhibits 13 and 13-A).

2. The loads represented by Parts 1, 2, 3, 5, 6, and 7 of Section 2, Exhibit 13, were all picked up after the issuance of the multiple lot document.

3. The loads represented by Parts 2, 3, and 8 of Section 2 were picked up within the required two days.

4. No additional loads were added to Parts 4 and 8 of Section 2, Exhibit 13, without proper documentation.

5. Loads were not picked up prior to issuance of a multiple lot document as charged in Parts 8 and 12 of Section 3, Exhibit 13.

6. An additional load was added to Part 10, Section 3, Exhibit 13, without required documentation from consignor.

7. Point of destination at Hayward was not shown on the bill of lading or freight bill in violation of Item 255, Paragraphs 1 and 2(e), MRT 2, on Parts 1 through 19 inclusive of Section 3, Exhibit 13.

8. Point of destination at Hayward was not shown on single multiple lot document in violation of Item 85, Paragraph 3(a), MRT 2, on Parts 1, 3, 4, 5, 7 through 13, 18, and 19 of Section 3, Exhibit 13.

9. Pellco on all 19 parts of Section 3, Exhibit 13, improperly rated shipments to the Hayward warehouse of United (off rail) by consolidating and rating such shipments as being part of other shipments delivered to United's warehouse at 1st and Jackson, Oakland, (on rail) in violation of Item 60, MRT 2.

10. Split delivery was performed without required documentation from the consignor on Parts 1 through 19 inclusive, Section 3, Exhibit 13, in violation of Paragraph 2, Item 172, MRT 2.

11. Pursuant to Finding 5, the undercharge in Part 12 of Section 3, Exhibit 13, is reduced from \$493.08 to \$185.56.

12. With the exception of Part 12, Section 3, the staff ratings in Exhibits 13 and 13-A are correct for Sections 1 and 3 of Volume VI.

13. The total amount of United undercharge is \$5,346.77.

Rossi

This allegation concerns 19 shipments of beer from the Van Nuys brewery of Joseph Schlitz to Rossi in San Francisco. Seven of the shipments are in Section 1 of Exhibit 14. The staff alleges that Section 1 freight bills indicate the carrier-billed shipments were directed to Barneveld Avenue, which is on rail, and partially unloaded at Hampshire, an off-rail location. Pellco's witness testified that the owner of Rossi informed a Pellco representative that Rossi was on rail and this information was

corroborated by a telephone call to The Western Pacific Railroad Company. The witness further testified that Rossi is listed as on rail in the SP Freight Tariff No. 1517-F, at Page 171 (Exhibit 33) although no street address is given.

The staff alleges multiple violations on the first seven parts, including failure to assess an off-rail charge (Item 210(b), MRT 2), failure to assess a switching charge (Item 200, MRT 2), split delivery performed without required documentation from consignor regarding points of destination (Item 172, Paragraph 2, MRT 2), off-rail point of destination not shown on single multiple lot document (Item 85, Paragraph 3(a), MRT 2), off-rail point of destination not shown on bill of lading or freight bill (Item 255, Paragraphs 1 and 2(e), MRT 2) one load picked up prior to issuance of a single multiple lot document (Item 85, Paragraphs 2(a) and 3, MRT 2), and one load added to a multiple lot shipment without the required documentation from the consignor (Item 85, Paragraphs 2(a) and 3, MRT 2).

Pellico used alternate rail rates to on-rail destinations. The Pellico rate expert billed each shipment to the San Francisco on-rail destination, then assessed the local truck rate on the portion delivered to the off-rail warehouse. The staff charged each transaction as two shipments: one to Barneveld at the rail alternative rate and the second to Hampshire at MRT 2 truck rates.

The staff alleges that Pellico neglected to impose the required switching charge (Item 200, MRT 2) on all 12 parts in the second section of Exhibit 14. It is further alleged that on parts 1 and 11 the entire shipment was not picked up in two days (Item 85, MRT 2), and on Part 5 that an additional load was added to a multiple lot shipment without the required documentation from the consignor (Item 85). A Pellico representative showed dispatch records to prove that all loads were picked up within the required two days. The allegation that an extra load was added to part 5 is based on information received from an employee of the shipper.

Findings on Rossi

1. Loads were not picked up prior to the issuance of a single multiple lot document on Part 1 of Section 1 of Exhibit 14.
2. No additional load was added to the multiple lot document as alleged on Part 4 of Section 1, Exhibit 14.
3. The required switching charge was not assessed on the seven parts in Section 1, Exhibit 14.
4. Split delivery was performed without the required documentation from the consignor on the seven parts in Section 1, Exhibit 14.
5. The point of destination at Hampshire Street was not shown on the bill of lading or freight bill as required, on the seven parts in Section 1, Exhibit 14.
6. The Hampshire point is not listed as a destination on the multiple lot documents in all seven parts in Section 1, Exhibit 14.
7. Pellco on all seven parts of Section 1, Exhibit 14, improperly rated shipments to the Hampshire Street, San Francisco, point of destination (off rail) by consolidating and rating such shipments as being part of other shipments delivered to the Barneveld Avenue, San Francisco, address (on rail) in violation of Item 60, MRT 2.
8. There has been a failure to assess the required switching charge on all 12 parts in Section 2, Exhibit 14.
9. The multiple lot shipments on Parts 1 and 11 of Section 2 were picked up in two days as required.
10. No additional load was added to Part 5 of Section 2 without documentation, as alleged.
11. The ratings and undercharges for Sections 1 and 2, Volume VII, in Exhibit 14, are correct with the following exceptions pursuant to Findings 9 and 10: undercharges reduced in Part 1, Section 2, from \$181.47 to \$26.39; Part 5, Section 2, from \$182.16 to \$26.95; Part 11, Section 2, from \$166.93 to \$4.44.
12. The total amount of Rossi undercharge is \$1,673.33.

Additional Findings

1. Pellco is a highway permit carrier operating under authority of this Commission.
2. Pellco was served with the appropriate tariffs, exception ratings, and distance table.

Conclusions

1. Pellco violated Sections 3664, 3667, 3668, and 3737 of the Public Utilities Code.
2. Pellco's motion to waive a portion of the loading charges on kegged beer is denied.
3. All other motions not previously ruled on are denied.
4. Pellco should pay a fine pursuant to Section 3800 in the amount of \$20,033.06 and, in addition thereto, should pay a fine pursuant to Section 3774 in the amount of \$3,500.00.
5. Pellco should be directed to cease and desist from violating the rates and rules of the Commission.

The Commission expects that Pellco Trucking, Inc. 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 Pellco Trucking, Inc. 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. Pellco Trucking, Inc. shall pay a fine of \$3,500.00 to this Commission pursuant to Public Utilities Code Section 3774 on or before the fortieth day after the effective date of this order. Pellco

Trucking, Inc. shall pay interest at the rate of seven percent per annum on the fine; such interest is to commence upon the day of the payment of the fine is delinquent.

2. Pellco Trucking, Inc. shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$20,033.06 on or before the fortieth day after the effective date of this order.

3. Pellco Trucking, Inc. 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 the findings herein and shall notify the Commission in writing upon collection.

4. Pellco Trucking, Inc. 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 Pellco Trucking, Inc.'s operating authority until the report is filed.

5. Pellco Trucking, Inc. 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 Pellico Trucking, Inc. 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 thirty days after completion of service on that respondent.

Dated at San Francisco, California, this 31st
day of MAY, 1978.

Robert Bateman
President
William J. Brown Jr.
Vernon L. Ferguson
Charles D. Throck

Commissioners

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.