

ORIGINAL

Decision No. 89679 NOV 28 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
 McCambridge Bros. Material Supplies,
 a co-partnership, and Wine World,
 Inc., d.b.a. Beringer Vineyards, a
 Delaware corporation.

Case No. 10618
 (Filed July 11, 1978)

Bernard V. McCambridge, for McCambridge
 Bros. Material Supplies, and Norman C.
 Frazier, for Wine World, Inc.;
 respondents.
Peter Fairchild, 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 into the operations, rates, charges, and practices of McCambridge Bros. Material Supplies (McCambridge), a co-partnership, for the purpose of determining whether McCambridge charged less than applicable minimum rates in connection with the transportation of wine for Wine World, Inc., a corporation, doing business as Beringer Vineyards (Beringer).

Public hearing was held before Administrative Law Judge Arthur M. Mooney in San Francisco on August 22, 1978, on which date the matter was submitted.

All substantive issues were stipulated to by McCambridge, Beringer, and the Commission staff and are summarized in the following findings.

Findings

1. McCambridge operates pursuant to radial highway common carrier, highway contract carrier, dump truck carrier, and live-stock carrier permits. They have a yard and repair shop in Sonoma, and they employ five drivers and operate three trucks, five tractors, two 40-foot flatbed trailers, four 45-foot vans, two low-bed trailers, and one set of bottom dump trailers. They have been served with all applicable minimum rate tariffs, distance tables, and exceptions ratings tariffs. Their gross operating revenue for the year ending September 30, 1977, was \$116,263.

2. On various days during the last three months of 1977, a staff representative conducted an investigation of McCambridge's operations for the period June through October 1977.

3. The staff investigation disclosed rate errors in connection with the transportation of wine in bottles by McCambridge for Beringer from the shipper's place of business in St. Helena to its warehouse in San Francisco and return shipments in the opposite direction during the review period. The rate errors resulted from the application of an alternative rail rate from and to Beringer's St. Helena winery by McCambridge.

4. Beringer's place of business at St. Helena has two locations, approximately a half mile apart, for the loading and unloading of truck shipments. There are also tanks on the premises for the storage of bulk wine. A railroad track of the Southern Pacific Transportation Company crosses Beringer's property at a distance of approximately 150 yards from one of the truck loading facilities. This track serves the Charles Krug Winery which is 300 or so yards north of Beringer's closest truck loading dock. Rail cars have never been stopped along the portion of the rail track that crosses Beringer's property, and the Southern Pacific has informed it that this cannot be done because it would block the ingress and egress of cars for Charles Krug. Based on these facts, Beringer's place of business at St. Helena is not a railhead location as that term is used in Minimum Rate Tariff 2

(MRT 2), and alternative rail rates cannot be applied to and from this location.

5. The minimum rates and charges and resulting undercharges computed by the staff in Exhibit 3 for the transportation in issue are correct.

6. McCambridge charged less than the lawfully prescribed minimum rates in the instances set forth in Exhibit 3 resulting in undercharges in the total amount of \$30,169.32.

7. In addition to the rate errors and undercharges referred to in Finding 6, the staff investigation indicated that there were undoubtedly additional undercharges in connection with transportation performed by McCambridge for Beringer during the last part of 1977; however, no documentation was produced by the staff to establish the actual existence of such undercharges.

Discussion

The only matter requiring discussion is the amount of fines, if any, that should be imposed on McCambridge.

The staff recommended that McCambridge be required to collect the undercharges found herein and that a fine in the amount of the undercharges plus a punitive fine of \$2,000 be imposed on the respondent carrier. Although Beringer took no position regarding the staff recommendations, its representative asserted that his company was not familiar with minimum rates or the regulations applying in connection therewith and that it was never its intent to pay incorrect rates. The partner of McCambridge who attended the hearing argued that the facts and circumstances herein do not warrant the imposition of any fines whatsoever on his company.

We agree with the staff recommendations that McCambridge be directed to collect the undercharges and that they be fined in the amount thereof. In this connection, Section 3800 of the Public Utilities Code provides that whenever the Commission, after a hearing, finds that a highway permit carrier has charged, collected, or received

less than the minimum rates and charges for transportation it has performed, it shall require such carrier to collect the undercharges involved and may impose a fine on the carrier equal to the amount of such undercharges. We are, therefore, required by legislative mandate to direct McCambridge to collect the \$30,169.32 in undercharges found herein. While Section 3800 leaves it to the discretion of the Commission as to whether the carrier should be fined in the amount of the undercharges, the carrier would be unjustly enriched and rewarded for our instituting a formal investigation if we did not do so.

With respect to a punitive fine, Section 3774 of the Public Utilities Code provides that as an alternative to the cancellation, revocation, or suspension of operating authority, the Commission may impose a fine of not exceeding \$5,000 on a highway carrier for various illegal activities, including the violation of any minimum rate order. Based on a review of the entire record, we are of the opinion that such a fine in the amount of \$750 should be imposed on McCambridge. In arriving at the amount of the punitive fine, we have taken into account the statements by the partner of McCambridge that: (1) It was the company's honest opinion that since a rail track of Southern Pacific crossed Beringer's St. Helena property in close proximity to one of its truck loading and unloading facilities, this property was a railhead location; (2) he had described the property and track location to the company's traffic consultant who, based on this information, was also of the opinion that the property was a railhead location; (3) it was never his company's intent to charge below the lowest applicable minimum rates for the transportation herein; and (4) when, as a result of the staff investigation, it became apparent to him that there was some doubt as to whether the property in question was a railhead location, he immediately revised his company's method of rating Beringer's St. Helena shipments and has been applying the applicable MRT 2 rates to this transportation since then. However, McCambridge is placed on notice that it is the duty of a highway permit carrier to assess not less than applicable minimum rates

and charges for any and all transportation it performs. The fact that certain determinations regarding the application of minimum rates, including the determination of whether a particular point is a railhead location, may at times be somewhat technical in nature and errors resulting therefrom may be unintentional does not exonerate a highway permit carrier from this obligation or excuse it from the possibility of penalties that might apply in connection with such errors. Furthermore, McCambridge is an experienced carrier and had it carefully observed and considered the factual situation at Beringer's St. Helena plant, it should have been apparent that it was not a railhead location insofar as the application of alternative rail rates is concerned.

Additional Findings

8. During the time period covered by the staff investigation, Beringer was not familiar with MRT 2 rates and regulations and was not aware that it was paying below the minimum rates and charges for the transportation in issue. As soon as this error was brought to its attention, it commenced paying not less than minimum rates and charges for all subsequent shipments.

9. At the time the transportation in issue moved, McCambridge was of the opinion that Beringer's St. Helena winery was a railhead location and that correct rates were being assessed for the shipments. However, had the carrier carefully observed and considered the factual situation at the winery, it should have been apparent to McCambridge that they were in error.

Conclusions

1. McCambridge violated Sections 3664 and 3737 of the Public Utilities Code.

2. McCambridge should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$30,169.32 and, in addition thereto, should pay a fine pursuant to Section 3774 in the amount of \$750.

The Commission expects that McCambridge 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 McCambridge or their 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. McCambridge Bros. Material Supplies, a co-partnership, shall pay a fine of \$750 to this Commission pursuant to Public Utilities Code Section 3774 on or before the fortieth day after the effective date of this order. Respondent carrier shall pay interest at the rate of seven percent per annum on the fine; such interest is to commence upon the day the payment of the fine is delinquent.

2. Respondent carrier shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$30,169.32 on or before the fortieth day after the effective date of this order.

3. Respondent carrier 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. Respondent carrier 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 carrier 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 carrier's operating authority until the report is filed.

5. Respondent carrier 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 carrier and cause service by mail of this order to be made upon the shipper respondent. 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 28th day of NOVEMBER, 1978.

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

Robert Batistich
President
William Lyons Jr.
Richard D. Swartz
Clare T. Delvick
Commissioners