

Decision No. 90159 APR 10 1979

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

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

ORDER CANCELING FINES
LEVIED BY DECISIONS NOS. 87448 AND 87725

In Decision No. 87448 dated June 7, 1977, the Commission found that Berkeley Warehouse & Draying Co., Inc. and Industrial Drayage, Inc., (Berkeley/Industrial), affiliated companies, undercharged respondent Macomber's Inc. and Macomber's Food Products (Macomber's) affiliated companies, in the amount of \$6,513.01, ordered Berkeley/Industrial to collect the undercharges, and fined Berkeley/Industrial the total amount of the undercharges. In the same decision the Commission found that M & L Trucking Company, Inc., (M&L) undercharged the same shipper in the amount of \$19,251.05 and Pan Pacific Screw and Bolt Company in the amount of \$1,641.63, ordered M&L to collect the undercharges, and fined M&L the amount of the

undercharges. In that decision the Commission also ordered the carriers to proceed with promptness, good faith, and diligence to collect the undercharges and to make periodic reports to the Commission on their progress. Decision No. 87725 dated August 17, 1977 modified Decision No. 87448 to reduce the fines levied on the carriers in the amount that the undercharges are found to be uncollectible after the carriers exhausted all actions to recover the undercharges. Reports from the carriers indicate that they each initiated court action to recover the undercharges and were awarded judgment against Macomber's for the amount of the undercharges but that Macomber's had been declared a bankrupt with no assets, \$400,000 in trade payables outstanding, and essentially nothing to pay such payables because of a practice of factoring all their receivables as well as the existence of secured transactions for all of their equipment and a federal lien on any assets. The carriers request a remission of the subject fines due to the uncollectibility of the undercharges and relief from expending further efforts and assets in attempting to collect the undercharges. The Commission staff recommends that the request be granted.

The Commission's records show that Berkeley/Industrial and M&L each have paid to the Commission the punitive fines assessed against them in Decision No. 87448 in the amount of \$1,500 and that M&L has paid to the Commission its fine of \$1,641.63 growing out of undercharges to Pan Pacific Screw and Bolt Company levied by Decision No. 87448.

IT IS ORDERED that:

1. The fine of \$6,513.01 levied against Berkeley Warehouse & Draying Co., Inc. and Industrial Drayage, Inc., by Ordering Paragraph 2 of Decision No. 87448, as amended by Ordering Paragraph 2 of Decision No. 87725 is canceled.
2. The fine of \$20,892.68 levied against M & L Trucking Company, Inc. by Ordering Paragraph 8 of Decision No. 87448, as amended by Ordering Paragraph 3 of Decision No. 87725, is reduced to \$1,641.63.

3. Berkeley Warehouse & Draying Co., Inc., Industrial Draying, Inc., and M & L Trucking Company, Inc. are relieved from expending further efforts or assets in attempting to collect undercharges from Macomber's, Inc. or Macomber's Food Products.

The effective date of this order shall be thirty days after the date hereof.

Dated at San Francisco, California, this 10th day of APRIL, 1979.

John E. Bryan
President
Richard L. Hagan
Richard A. Kroll
Robert J. Babin
James M. Smith
Commissioners