

ORIGINAL

Decision No. 90229 APR 24 1979

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 WILSON ENTERPRISES, INC./WILSON TRANSPORTATION CO., and FAR WEST HOMES, INC., MOUNTAIN VALLEY RECREATIONAL VEHICLES, INC., PACO ENGINEERING CORP., SILVERCREST INDUSTRIES, INC. and ZIEMAN MANUFACTURING CO., California corporations, and KAUFMAN AND BROAD, INC., a Maryland corporation.

OII No. 34
(Filed December 19, 1978)

Billie G. Wilson, for himself, dba Wilson Transportation Company, respondent.
Grant E. Tanner, Attorney at Law, and E. H. 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 Billie G. Wilson (Wilson), dba Wilson Transportation Co., the predecessor company to Wilson Enterprises, Inc., a corporation, to determine the following:

- "(1) Whether respondent Wilson, in performing transportation for respondents Far West Homes, Inc. of Yuba City, Kaufman and Broad Home Systems, Inc. of Los Angeles, Mountain Valley Recreational Vehicles, Inc. of Marysville, Paco Engineering Corp. of Wilmington, Silvercrest Industries, Inc. of Norwalk, and Ziemann Manufacturing Co. of Whittier, violated Sections 3664, 3667, 3668, and 3737 of the Public Utilities Code by charging less than the minimum rates set forth in Minimum Rate Tariff No. 2 (MRT 2) and supplements thereto.

- "(2) Whether any of the above-named shipper respondents have paid less than the applicable rates and charges for the transportation performed by respondent Wilson.
- "(3) Whether any sum of money is now due and owing respondent Wilson from any of the above-named shipper respondents.
- "(4) Whether respondent Wilson should be ordered to collect from any of the above-named shipper respondents, or from any person liable therefor, the difference between the charges collected and the charges due under the aforementioned tariff.
- "(5) Whether respondent Wilson violated Section 3705 of the Public Utilities Code by failing to produce business records, required to be kept by highway permit carriers, to authorized Commission inspectors.
- "(6) Whether respondent Wilson violated Section 3668 of the Public Utilities Code by falsifying freight bills or other records of charges for transportation provided to any of the above-named shipper respondents.
- "(7) Whether respondent Wilson should be ordered to cease and desist from any and all unlawful operations and practices.
- "(8) Whether the operating authority of respondent Wilson should be canceled, revoked, suspended, or, as an alternative, whether a fine should be imposed pursuant to Public Utilities Code Section 3774.
- "(9) Whether respondent Wilson should be ordered to pay a fine in the amount of the undercharges, pursuant to Section 3800 of the Public Utilities Code.
- "(10) Whether any other order or orders that may be appropriate should be entered in lawful exercise of the Commission's jurisdiction."

A hearing on the matter was held before Administrative Law Judge Pilling in Sacramento on February 7, 1979.

Wilson was issued a radial highway common carrier permit on June 26, 1970. (In July of 1978 the permit was transferred to a corporation known as Wilson Enterprises, Inc. of which Wilson is president and Pauline Wilson is secretary-treasurer.) At the time of issuance

Of the permit, Wilson received copies of Minimum Rate Tariffs 1-B, 2, 9-B, Exceptions Rating Tariff 1, and Distance Table 8 and has continued to receive supplements thereto. Wilson operated one tractor, one semitrailer, and one flatbed trailer and used subhaulers extensively. For the year ended September 30, 1977 Wilson grossed \$68,118 from his trucking operations. During April, May, June, July, and August 1977, Wilson hauled a total of 49 shipments of steel beams from Wilmington to Yuba City, Rancho Cordova, a point 6.0 miles northeast of Olivehurst, and Woodland, as the case may be, for the subject shippers. For 41 of the hauls Wilson charged the shippers 50 percent of the applicable minimum rate and for the other hauls charged 47 percent of the applicable minimum rate. All rates were assessed without reference to the applicable minimum rate tariff. The amount each shipper was undercharged by Wilson was as follows:

Far West Homes, Inc.	\$ 1,298.97
Kaufman and Broad Home Systems, Inc.	3,472.72
Mountain Valley Recreational Vehicles, Inc.	1,326.45
Paco Engineering Corp.	774.14
Silvercrest Industries, Inc.	4,592.86
Zieman Manufacturing Co.	<u>9,911.60</u>
Total Undercharges	\$21,376.74

At the hearing Wilson acknowledged, through stipulation with the staff counsel, that: (1) Wilson had charged less than the applicable minimum rates for the subject hauls; (2) the involved shippers had paid him less than the applicable minimum rates; (3) the total amount of undercharges due and owing was \$20,976; and (4) Wilson violated Sections 3664, 3667, 3668, and 3737 of the Public Utilities Code in so doing. The difference between the staff's computation of undercharges (\$21,376.74) and the \$20,976.00 in undercharges stipulated by Wilson is \$400 which Wilson asserted had in fact been collected from Kaufman and Broad Home Systems, Inc., and should be credited to Part 8 of Exhibit 6. Wilson was granted permission to file a late-filed exhibit within two weeks furnishing proof of the \$400 collection. The material filed by Wilson did not establish collection of the \$400. In the circumstances, the staff's computation of undercharges totaling \$21,376.74 will be found to be correct.

TD-3
4/23/79

The Commission staff witness, who was assigned to check Wilson's records of the subject hauls, testified that Wilson was highly uncooperative in producing such records with the result that the witness was required to seek records from the individual consignees, and that of the freight bills Wilson did produce covering the subject hauls, 13 of the bills showed proper ratings for the hauls they covered but that, in fact, Wilson collected less than the amount shown on each of the 13 freight bills, leading the witness to conclude that they were false billings.

The Commission staff recommends that Wilson be assessed a punitive fine of \$5,000 because of Wilson's purposefully charging less than the applicable minimum rates, his failure to produce business records required to be kept by highway permit carriers to authorized Commission inspectors, and his alleged falsifying of freight bills.

Wilson asserted that he is just about bankrupt and will be unable to pay a punitive fine. Wilson offered no defense to the staff's allegations. None of the respondent shippers appeared though served with a copy of OII No. 34.

We agree that a punitive fine of \$5,000 should be levied for the reasons urged by the staff. The Commission will not tolerate the falsification of documents and uncooperative conduct on the part of a respondent which impedes investigations by the staff.

Findings

1. At all times pertinent herein Wilson was operating as a radial highway common carrier whose operations were subject, as the case may be, to the Commission's Minimum Rate Tariffs 1-B, 2, 9-B, Exceptions Rating Tariff 1, Distance Table 8, and supplements thereto.

2. Wilson duly received copies of the minimum rate tariffs set out in Finding 1.

3. Wilson transported three shipments of steel beams for the account of Far West Homes, Inc. from Wilmington to Yuba City as identified in Exhibit 5 and collected from Far West Homes, Inc. less than the minimum rate applicable to each such shipment, resulting in total undercharges for all three shipments of \$1,298.97.

4. Wilson transported nine shipments of steel beams for the account of Kaufman and Broad Home Systems, Inc. from Wilmington to Rancho Cordova as described in Exhibit 6 and collected from Kaufman and Broad Home Systems, Inc. less than the minimum rate applicable to each such shipment, resulting in total undercharges for all nine shipments of \$3,472.72.

5. Wilson transported three shipments of steel beams for the account of Mountain Valley Recreational Vehicles, Inc. from Wilmington to a point 6.0 actual miles from Olivehurst as described in Exhibit 7 and collected from Mountain Valley Recreational Vehicles, Inc. less than the minimum rate applicable to each such shipment, resulting in total undercharges for all three shipments of \$1,326.45.

6. Wilson transported two shipments of steel beams for the account of Paco Engineering Corp. from Wilmington to Woodland as described in Exhibit 8 and collected from Paco Engineering Corp. less than the minimum rate applicable to each such shipment, resulting in total undercharges for the two shipments of \$774.14.

7. Wilson transported 11 shipments of steel beams for the account of Silvercrest Industries, Inc. from Wilmington to Woodland as described in Exhibit 9 and collected from Silvercrest Industries, Inc., less than the minimum rate applicable to each such shipment, resulting in total undercharges for all 11 shipments of \$4,592.86.

8. Wilson transported 21 shipments of steel beams for the account of Zieman Manufacturing Co. from Wilmington to Woodland as described in Exhibit 10 and collected from Zieman Manufacturing Co. less than the minimum rate applicable to each such shipment, resulting in total undercharges for all 21 shipments of \$9,911.60.

9. Respondent shippers have paid less than the applicable rates and charges for the transportation performed for them by Wilson as set out, respectively, in Findings 3 through 8.

10. The undercharges set out in Findings 3 through 8 are due to Wilson from the respective shippers.

11. Wilson falsified freight bills covering charges for transportation provided by him for some of the respondent shippers on 13 occasions.

12. Wilson willfully failed to produce business records involved in this investigation and required to be kept by him as a radial highway common carrier when requested by authorized Commission inspectors.

Conclusions

1. Wilson has violated Sections 3664, 3667, 3668, and 3737 of the Public Utilities Code in hauling for Far West Homes, Inc., Kaufman and Broad Home Systems, Inc., Mountain Valley Recreational Vehicles, Inc., Paco Engineering Corp., Silvercrest Industries, Inc., and Zieman Manufacturing Co. by undercharging them, respectively, in the amounts of \$1,298.97, \$3,472.72, \$1,326.45, \$774.14, \$4,592.86, and \$9,911.60. ✓

2. Wilson should be ordered to collect the amounts specified in Conclusion 1 from the respective shippers.

3. Wilson violated Section 3705 of the Public Utilities Code by failing to produce business records, required to be kept by highway permit carriers, to authorized Commission inspectors.

4. Wilson violated Section 3668 of the Public Utilities Code by falsifying freight bills for charges for transportation provided for some of the subject respondent shippers.

5. Wilson should be ordered to cease and desist from any and all unlawful operations and practices of the nature found herein to be in violation of the Public Utilities Code.

6. Wilson should be ordered pursuant to Section 3800 of the Public Utilities Code to pay a fine of \$21,376.74.

7. Wilson should pay a fine of \$5,000 levied pursuant to Section 3774 of the Public Utilities Code.

The Commission expects that Wilson 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 Wilson 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. Billie G. Wilson shall pay a fine of \$5,000 to this Commission pursuant to Public Utilities Code Section 3774 on or before the fortieth day after the effective date of this order. Billie G. Wilson

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. Billie G. Wilson shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$21,376.74 on or before the fortieth day after the effective date of this order.

3. Billie G. Wilson 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 Findings 3 through 8 and shall notify the Commission in writing upon collection.

4. Billie G. Wilson 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 Billie G. Wilson's operating authority until the report is filed.

5. Billie G. Wilson 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 Billie G. Wilson 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 24th day of APRIL, 1979.

John E. Gurnea
President
James L. Sturgeon
Richard D. Hoyle
Philip J. ...
James ...
Commissioners