

ORIGINAL

Decision No. 90235 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 MGM TRANSPORTATION COMPANY, INC. and MODERN MATERIALS COMPANY, INC., California corporations.

OII No. 30  
(Filed October 31, 1978)

Milton W. Flack, Attorney at Law, for MGM Transportation Co., inc., and David P. Christianson, Attorney at Law, for Modern Materials Co., Inc., respondents.  
Grant E. Tanner, Attorney at Law, and Edward 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 MGM Transportation Company, Inc. (MGM) for the purpose of determining whether MGM charged less than applicable minimum rates in connection with the transportation of roofing materials for Modern Materials Company, Inc. (Materials).

Public hearing was held before Administrative Law Judge Arthur M. Mooney in Los Angeles on February 21, 1979, on which date the matter was submitted.

MGM operates pursuant to radial highway common carrier, highway contract carrier, and agricultural carrier permits. At the time of the staff investigation referred to hereinbelow, it had a terminal in Paramount; employed six drivers, one mechanic, one dispatcher, and three office personnel; operated six 2-axle tractors and 16 sets of flat-rack double trailers; and had received all applicable minimum rate tariffs, distance tables, and exception

rating tariffs. Its gross operating revenue for the year ending March 31, 1978, was \$983,925.

A representative of the Commission staff visited MGM's place of business on April 5, 1978, and various dates thereafter and reviewed its records for the period August 1, 1977, through March 31, 1978. The representative testified that: (1) he requested all business records for the review period; (2) he was originally given records for transportation performed for various glass shippers only; (3) he was then referred to the carrier's bookkeeper at another location who had the company's general ledgers; (4) upon reviewing the general ledgers, he discovered that MGM had received money from Materials; (5) he then returned to the carrier's office and requested the records for the Materials' account; (6) he was informed that the documents relating to this account would not be furnished to him until he had completed his review of the other accounts; (7) he returned at a later date and was given the documentation for the Materials' account, and it was apparent that the rates charged by MGM for the transportation performed for this shipper were below the applicable minimum rates; (8) he made true and correct photostatic copies of the freight bills and supporting documents for the transportation by MGM for Materials during the review period, and the photocopies are all included in Exhibit 2; (9) he personally determined whether the origins and destinations of the transportation covered by Exhibit 2 were served by rail facilities, and the results of this investigation are set forth in Exhibit 3; (10) he was informed by MGM that the rates it assessed for the transportation covered by Exhibit 2 were obtained from a traffic service in Los Angeles and were based on a minimum weight of 50,000 pounds per shipment; and (11) no master billing was issued for any of the transportation in Exhibit 2.

A staff rate expert testified that he took the sets of documents in Exhibit 2, together with the supplemental information testified to by the representative and the data in Exhibit 3, and formulated Exhibit 4 which shows the rates and charges assessed by the responding carrier, the minimum rates and charges computed by the staff, and the alleged undercharges for the 131 shipments in issue. He stated that the rate errors shown in his exhibit resulted from the assessment of incorrect rates below the level of the lowest lawful minimum rates by the carrier. The witness testified that the total amount of the undercharges shown in Exhibit 4 is \$37,217.37.

No evidence was presented by either respondent. MGM stipulated that all information shown in the four staff exhibits was correct and also stipulated to the following staff recommendations:

- (1) MGM should be ordered to collect the undercharges shown in Exhibit 4 from Materials or any other party liable for such undercharges;
- (2) MGM should be ordered to pay a fine in the amount of the undercharges shown in Exhibit 4; and
- (3) MGM should be ordered to pay a punitive fine in the amount of \$2,800.

At the outset of the hearing and at various times during and at the close of the hearing, the attorney for Materials asserted that the Commission does not have jurisdiction over a shipper under the sections of the Public Utilities Code cited in the Order Instituting Investigation, and he stated that other than the jurisdiction question, he would not otherwise participate in the proceeding, including the entering of any stipulations or the entering of any objections or other comments on any exhibits or other evidence that might be presented.

The investigation order specifically refers to Sections 3664, 3667, 3668, and 3737 of the Public Utilities Code, and the issue under investigation is whether MGM violated these particular sections. These sections, as pointed out by the shipper's attorney, refer to various permit carriers and not to shippers. Likewise, Sections 3774 and 3800 of the Code, which include penalty and collection of undercharges provisions, refer to various permit carriers only and not to shippers. We are not attempting to assert jurisdiction over the shipper in this proceeding. "The purpose of naming shippers as respondents is to allow such persons full notice and opportunity to be heard before the issuance of a Commission decision which could determine the amount of undercharges, if any, incurred on transportation which is the subject matter of the investigation. (Pratt v Coast Trucking, 228 Cal. App. 2d 139, 39 Cal. Rptr. 332; Ryerson v Riverside Cement Company, 266 ACA 866, 72 Cal. Rptr. 595.)" (in re Jack Robertson (Boyd Transp.) (1969) 69 CPUC 563, 563.)

Furthermore, Section 3800 of the Code provides in part that whenever the Commission, after hearing, finds that any highway permit carrier has charged less than applicable minimum rates, the Commission shall require such carrier to collect the undercharges and may impose a fine in the amount thereof upon the carrier. The term "shall" is defined in Section 14 of the Code as mandatory. The Commission is, therefore, directed by legislative mandate to require a carrier to collect any and all undercharges that have been found after hearing on the matter.

We agree with the staff ratings and resulting undercharges shown in Exhibit 4 and will adopt the stipulation by MGM and the staff regarding the collection of undercharges and fines.

Findings

1. MGM operates pursuant to radial highway common carrier, highway contract carrier, and agricultural carrier permits.
2. MGM was served with copies of all applicable minimum rate tariffs, distance tables, and exception ratings tariffs.
3. The minimum rates and undercharges computed by the staff for the transportation summarized in Exhibit 4 are correct.
4. MGM charged less than the lawfully prescribed minimum rates in the instances set forth in Exhibit 4 in the total amount of \$37,217.37.

Conclusions

1. MGM violated Sections 3664, 3667, 3668, and 3737 of the Public Utilities Code.
2. MGM should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$37,217.37 and, in addition thereto, should pay a fine pursuant to Section 3774 in the amount of \$2,800.
3. MGM should be directed to cease and desist from violating the minimum rates and rules of the Commission.

The Commission expects that MGM 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 MGM 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.

C R D E R

IT IS ORDERED that:

1. MGM Transportation Company, Inc. (MGM) shall pay a fine of \$2,800 to this Commission pursuant to Public Utilities Code Section 3774 on or before the fortieth day after the effective date of this order. MGM 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. MGM shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$37,217.37 on or before the fortieth day after the effective date of this order.
3. MGM 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 4 and shall notify the Commission in writing upon collection.
4. MGM 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 MGM's operating authority until the report is filed.

5. MGM 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 MGM and cause service by mail of this order to be made upon respondent Modern Materials Company, Inc. 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. Guyon  
President  
Barbara L. Stinson  
Richard D. Howell  
Robert J. Stroh  
Samuel J. Krinsky  
Commissioners