

SW/NB

ORIGINAL

Decision No. 91130

DEC 18 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of ADVANCED DELIVERY SERVICE, for relief from penalty imposed pursuant to Section 5007 of PU Code.

Application No. 59025
(Filed July 27, 1979)

Stephen J. Treiber, Attorney at Law, for applicant.
Stanley E. Garrett, for the Commission staff.

O P I N I O N

Advanced Delivery Services, Inc., doing business as Advance Mail Delivery Service, 1220 North Broadway, Santa Ana, California 92711, holds a radial highway common carrier permit, a highway contract carrier permit and a highway common carrier certificate under File T-104,019.

Applicant was assessed penalties by the Commission aggregating \$689.52 for late filing its report of gross operating revenue from trucking operations for the first quarter of 1979. Applicant is not now delinquent, having paid the required fees and penalties. It seeks to be relieved of the penalty.

Public hearing was held on September 11, 1979 at Los Angeles before Administrative Law Judge Norman B. Haley, at which time the matter was submitted.

The protested amount of \$689.52 is the sum of two penalties which were calculated by the Commission and added to fees and taxes based on applicant's gross operating revenue for the first quarter of 1979 pursuant to Public Utilities Code Division 2, Chapter 3 (Highway Carriers' Uniform Business License Tax Act), and Division 2, Chapter 6 (Transportation Rate Fund and Fees).

Evidence on behalf of applicant was presented through its comptroller, Stephen J. Treiber. Assertedly, the quarterly report and fees were due May 15, 1979, but were filed and paid three days later on May 18, 1979 because of change of bookkeepers which caused a problem with accounting. The witness stated that applicant has had a permit from the Commission to transport property for ten years and has never been late before in filing quarterly reports and paying fees. In view of that record and the circumstances involved, he does not believe the penalty is justified.

Evidence on behalf of the staff was presented by Stanley E. Garrett, associate transportation representative. This witness stated that (a) the first quarter report and fees and taxes were due and payable April 15, 1979 under Public Utilities Code Section 5003.1; (b) Section 5007 allows for a default period of 30 days without penalty; and (c) applicant's first quarter report (with fees and taxes) was dated May 18, 1979, three days after expiration of the allowed 30-day default period. It was his opinion that the penalty was properly assessed and that problems with applicant's accounting functions do not constitute sufficient justification for the relief sought.

According to Sections 4304 and 5003.1 of the Public Utilities Code, applicant should have filed with the Commission, between the first and fifteenth of April 1979, a statement showing gross operating revenue from transportation of property for the preceding three calendar months and paid the required fees. April 15 is fifteen days after the end of the first quarter. Section 5003.1 is quoted below:

"5003.1. Every railroad corporation, express corporation, freight forwarder, and every person or corporation operating vessels, as these terms are defined in Part 1 (commencing with Section 201) of Division 1, and every

motor transportation broker, as the term is defined in the Motor Transportation Brokers' Act, and every person or corporation owning or operating motor vehicles in the transportation of property for hire upon the public highways under the jurisdiction of the commission shall, between the first and fifteenth days of January, April, July, and October of each year, file with the commission a statement showing the gross operating revenue derived by such person or corporation from the transportation of property for the preceding three calendar months, and shall at the time of filing such report pay to the commission a fee of ten dollars (\$10) for each quarter. Every express corporation, freight forwarder, motor transportation broker, and every person or corporation owning or operating motor vehicles in the transportation of property for hire upon the public highways under the jurisdiction of the commission shall, at the time of filing such report, pay to the commission a fee equal to one-third of 1 percent of the amount of such gross operating revenue; provided, however, that for any particular fiscal year the commission, with the approval of the Department of Finance, may fix said fee at less than one-third of 1 percent of said amount."

The fee of one-third of 1 percent referred to in Section 5003.1 had been reduced by the Commission to nine-fortieths of 1 percent, which was the rate applied in the first quarter of 1979.

The fees required by Sections 4304 and 5003.1 were not paid by April 15, 1979 and, thereafter, applicant was in default. However, Sections 4307 and 5007 contain a 30-day penalty-free default period during which time quarterly payments still could have been made without penalty. Section 5007 is quoted below:

"5007. If any transportation agency referred to in this chapter is in default in the payment of the fees prescribed, other than filing fees, for a period of 30 days or more, the

commission may suspend or revoke any certificate of public convenience and necessity, permit, or license of such agency, and shall estimate from all available information the gross operating revenue of such agency, and shall add to such estimate a penalty of 25 percent for failure, neglect, or refusal to report. The transportation agency shall be estopped from complaining of the amount of such estimate. In no event shall such penalty be less than one dollar (\$1). Upon payment of the amount estimated and the penalty thereon, the certificate, permit, or license of such agency theretofore suspended in accordance with the provisions of this section shall be reinstated.

"The commission may grant a reasonable extension of such 30-day period to any transportation agency, upon written application of the transportation agency and proper showing thereunder of the necessity for such extension.

"Upon revocation of any operating authority issued to any transportation agency subject to this chapter, all fees provided for herein shall become due and payable immediately."

Copy of the completed quarterly report form for the first quarter of 1979 and copy of a statement calculating the penalty charges of \$689.52 are attached to the application. The statement was prepared by the Commission's Tariff and License Branch and furnished applicant by the Director of Transportation. The quarterly report form states at the top, among other things, that it is for the period January 1, 1979 to March 31, 1979; that the report, with payment, is due April 15, 1979; and is subject to penalty if not mailed and postmarked on or before May 15, 1979. The statement calculating penalty charges carries the following notation, among others:

"Penalty charges must be added. According to the postmark on your envelope, your fees have been paid on May 18, 1979."

Section 5007 of the Public Utilities Code, quoted above, and Section 4307 provide that the Commission may suspend or revoke a carrier's operating authority if the carrier is in default in the payment of fees, other than filing fees, for a period of 30 days or more. Application of this penalty by the Commission is discretionary. However, those sections state that the Commission shall estimate from all available information the gross operating revenue of such agency, and shall add to such estimate a penalty of 25 percent for failure, neglect, or refusal to report. This monetary penalty is mandatory. The monetary penalty is required even though the Commission does not also suspend or revoke the carrier's operating authority.

The circumstances advanced by applicant do not justify the relief sought. The 30-day penalty-free default period was in addition to a 15-day period following the end of the first quarter of 1979. Applicant should have had the first quarter report prepared and ready to mail by April 15, 1979 to avoid being in default. Management personnel should have been aware of the quarterly report form with instructions furnished by the Commission four times each year. The total penalty assessed was computed correctly in accordance with the methods prescribed in Code Sections 4307 and 5007. It was not shown to be excessive or unduly harsh.

Findings of Fact

1. After April 15, 1979 applicant, a highway carrier, was in default in the payment of fees and taxes for the first quarter of 1979, as specified in Public Utilities Code Division 2, Chapter 3 and Chapter 6.

2. Applicant was assessed penalties totaling \$689.52 for failure to file its quarterly report of gross operating revenue from trucking operations for the first quarter of 1979 on or

before May 15, 1979, which was the end of the 30-day penalty-free default period provided in Sections 4307 and 5007 of the Public Utilities Code. Applicant made its filing on May 18, 1979.

3. Applicant is not now delinquent with respect to fees, taxes, or penalties on these fees and taxes for the first quarter of 1979, having subsequently paid them.

4. Under Sections 4307 and 5007 the Commission is authorized, but not required, to suspend or revoke a carrier's operating authority if the carrier is in default in the payment of fees, other than filing fees, for a period of 30 days or more, or beyond an authorized extension of such period.

5. Under Sections 4307 and 5007 the Commission is required to assess the monetary penalty specified in those sections if the carrier is in default in the payment of fees and taxes, other than filing fees, for a period of 30 days or more, or beyond an authorized extension of such period.

6. The monetary penalty identified in Finding 5 was mandatory, even though the Commission did not also apply the penalty identified in Finding 4.

7. The total penalty of \$689.52 was not shown to have been computed incorrectly. The penalty was not shown to be excessive or unduly harsh.

8. The record does not justify the relief sought.

Conclusion of Law

The Commission concludes that the application should be denied.

O R D E R

IT IS ORDERED that the relief requested in Application No. 59025 is denied.

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

Dated DEC 18 1979, at San Francisco, California.

John E. Byron
President
James L. Stephens
Robert H. Howell
Charles J. Daniels
Larry J. Smith
Commissioners