

ORIGINAL

Decision No. 91138

DEC 18 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 Brothers Transportation, Inc., a foreign corporation; and Pacific States Steel Corporation, a California corporation.

OII No. 58  
(Filed August 28, 1979)

Jack B. Littlefield, for Brothers Transportation, Inc.; and Patrick E. McKeegan, for Pacific States Steel Corporation; respondents.  
Elmer Sjostrom, Attorney at Law, and Ed Hjelt, for the Commission staff.

O P I N I O N

Public hearing in the captioned order instituting investigation (OII) was held before Administrative Law Judge Norman B. Haley at Los Angeles on October 23, 1979, and the matter was submitted.

A copy of OII 58 is attached hereto as Appendix A. All substantive issues were stipulated to on October 23, 1979 by the respondent carrier (Brothers), the respondent steel company (Pacific), and the two Commission staff (staff) appearances. The two-page stipulation with Appendices 1, 2, and 3 was received as Exhibit 1 of staff counsel. No oral testimony or other documentary evidence was offered by any party. The stipulated issues are summarized in the following findings of fact.

Findings of Fact

1. Brothers is a Nevada corporation. Jack B. Littlefield is president. The company operates as a radial highway common carrier (SB860 (1977) conversion certificate <sup>granted</sup> ~~issued~~ May 19, 1979), as a highway contract carrier, and as an agricultural carrier. SS

2. Brothers has its main office, yard, and dispatch facility at 16,200 South Atlantic Place, Paramount (Los Angeles County). It also has dispatch offices in Fontana (San Bernardino County) and Pittsburg (Contra Costa County). It operates 15 tractors and 125 forty-foot flat rack semitrailers. It has a total of 32 office, driver, and mechanic employees. It has been served with all applicable minimum rate tariffs, including the exception ratings tariff and distance table.

3. Brothers' gross revenue in 1978 was \$2,848,178. Gross revenue for the first half of 1979 was \$1,154,364.

4. On various dates in September 1978, a member of the staff conducted an investigation into Brothers' operations, rates, charges, and practices. The scope of the staff investigation included transportation listed in the OII in this case.

5. The staff investigation identified in Finding 4 disclosed that Brothers, in performing transportation for Pacific, violated Sections 3664, 3667, and 3737 of the Public Utilities Code by assessing rates and charges less than the applicable minimum rates and charges as a result of its failure to comply with the rules prescribed in Item 85 of Minimum Rate Tariff No. 2 governing transportation of multiple lot shipments and through the use of an incorrect rate.

6. The documents contained in Appendix 2 attached to Exhibit 1 are true and correct copies of the documents issued by Brothers to Pacific covering transportation subject to OII 58.

7. Appendix 3 of Exhibit 1, showing total undercharges of \$23,324.51, is true and correct.

8. Ordering Paragraphs 1, 2, 3, 5, 6, 7, 8, 9, and 10 of OII 58 should be answered in the affirmative.

9. Brothers should pay a punitive fine of \$1,500 pursuant to the provisions of Section 3774 of the Public Utilities Code.

10. Brothers and Pacific both assert that the violations were inadvertent and that steps have been taken by both respondents to eliminate similar violations.

Conclusions of Law

1. Brothers violated Sections 3664, 3667, and 3737 of the Public Utilities Code.

2. Brothers should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$23,324.51 and, in addition thereto, should pay a fine pursuant to Section 3774 in the amount of \$1,500.

The Commission expects that Brothers 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 Brothers 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.

O R D E R

IT IS ORDERED that:

1. Brothers Transportation, Inc. shall pay a fine of \$1,500 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 \$23,324.51 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 7 and shall notify the Commission in writing upon collection.

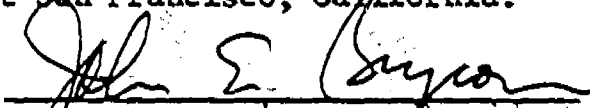
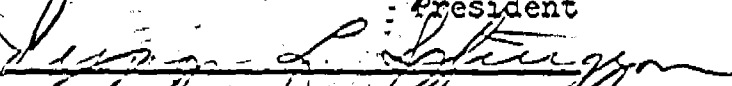



4. Respondent carrier shall proceed promptly, diligently, and in good faith to pursue all reasonable measures to collect the undercharges. In the event the undercharges ordered to be collected by paragraph 3 of this order, or any part of such undercharges, remain uncollected sixty days after the effective 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 DEC 19 1979, at San Francisco, California.

  
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President  
  
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Commissioners

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FILED  
PUBLIC UTILITIES COMMISSION

AUG 28 1979

Investigation on the Commission's own )  
motion into the operations, rates, charges )  
and practices of Brothers Transportation, )  
Inc., a foreign corporation; and Pacific )  
States Steel Corporation, a California )  
corporation. )

SAN FRANCISCO OFFICE  
O.I. No. 58

ORDER INSTITUTING INVESTIGATION

It appearing that Brothers Transportation, Inc., hereinafter referred to as respondent Brothers, whose mailing address is 16200 So. Atlantic Place, Paramount, CA 90723, is engaged in the business of transporting property over the public highways in this State for compensation, having been issued a Radial Highway Common Carrier permit on December 21, 1977, and a Highway Contract Carrier permit on December 21, 1977; and

It further appearing that in the operation of such business, respondent Brothers may have violated Sections 3664, 3667 and 3737 of the Public Utilities Code; and

It further appearing that Pacific States Steel Corporation, a California Corporation, hereinafter referred to as respondent Pacific, whose mailing address is 34863 Mission Blvd., Union City, CA 94587, has received services from respondent Brothers over the public highways of this State for compensation and as such, is a shipper of property; and

It further appearing that the aforementioned shipper respondent may have violated Section 3669 of the Public Utilities Code; and good cause appearing,

IT IS ORDERED that an investigation on the Commission's own motion be hereby instituted into the operations, rates, charges and practices of respondent Brothers and the shipper respondent for the purpose of determining:

- 1. Whether respondent Brothers in performing transportation for the above-named shipper respondent violated Sections 3664, 3667 and

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3737 of the Public Utilities Code by charging less than the applicable minimum rates.

2. Whether respondent Brothers in performing transportation for the above-named shipper respondent violated Sections 3664, 3667 and 3737 of the Public Utilities Code by assessing rates and charges less than the applicable minimum rates and charges as a result of its failure to comply with the rules prescribed in Item 85 of Minimum Rate Tariff No. 2 governing the transportation of multiple lot shipments.

3. Whether the above-named shipper respondent has paid less than the applicable rates and charges performed by respondent Brothers.

4. Whether the above-named shipper respondent has sought to obtain or has obtained transportation of property by respondent Brothers at less than the applicable minimum rates and charges in violation of Section 3669 of the Public Utilities Code.

5. Whether any sum of money is now due and owing respondent Brothers from the above named respondent shipper.

6. Whether respondent Brothers should be ordered to collect from the above-named shipper respondent, or from any other person liable therefor, the difference between the charges collected and the charges due under the aforementioned tariff.

7. Whether respondent Brothers should be ordered to cease and desist from any and all unlawful operations and practices.

8. Whether the operating authority of respondent Brothers should be cancelled, revoked, suspended or as an alternative, whether a fine should be imposed pursuant to Section 3774 of the Public Utilities Code.

9. Whether respondent Brothers 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 the lawful exercise of the Commission's jurisdiction.

The scope of the above investigation includes, but is not limited to, the transportation represented by the freight bills and supporting documents listed below:

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<u>Freight Bill No.</u>	<u>Date</u>	<u>Freight Bill No.</u>	<u>Date</u>
22722	1/11/78	23817	4/3/78
22764	1/13/78	23959	4/10/78
22805	1/17/78	24053	4/20/78
22934	1/26/78	24137	4/25/78
22936	1/26/78	24138	4/25/78
22935	1/26/78	24139	4/25/78
22937	1/26/78	24140	4/25/78
23012	2/2/78	22704	1/10/78
23013	2/2/78	22763	1/13/78
23014	2/2/78	23011	2/2/78
23227	2/20/78	23122	2/8/78
23246	2/21/78	23228	2/20/78
23284	2/24/78	23370	3/2/78
23229	2/20/78	23514	3/7/78
23369	3/2/78	23634	3/21/78
23367	3/2/78	23960	4/10/78
23515	3/7/78	24100	4/24/78
23633	3/21/78	24101	4/24/78
23816	4/3/78		

Public hearing in this investigation will be held before Administrative Law Judge Norman Haley on October 23 & 24, 1979, at 10:00 a.m. in the Commission Courtroom, State Building, 107 S. Broadway, Los Angeles, California.

The Executive Director is directed to cause a certified copy of this order to be personally served forthwith on respondent Brothers and to cause a certified copy of this order to be mailed forthwith to respondent shipper.

Dated AUG 28 1979, San Francisco, California.

JOHN E. BRYSON  
President  
VERNON L. STURGEON  
RICHARD D. GRAVELLE  
LEONARD M. CRIMES, JR.

Commissioner Claire T. Detric, being necessarily absent, did not participate in the disposition of this proceeding.