

ORIGINAL

Decision No. 92151 AUG 19 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own
 motion into the operations, rates, and
 practices of Kenneth C. Butin and
 Michael K. Butin, dba M-K Trucking and
 Capital Lumber Company, a corporation,
 Charleys Fence Company, a corporation,
 Marquart-Wolfe Lumber Co., a corporation,
 Products Sales Inc., aka Fleetwood Western
 Inc., a corporation, Ransom Lumber Sales, a
 corporation, Shaw Lumber Company, a corpo-
 ration, South Bay Redwood Co., a corpo-
 ration, T & R Lumber Co., a corporation
 respondents.

OII No. 3
(Filed November 8, 1977)

ORDER EXTENDING TIME

Decision No. 90384 dated June 5, 1979 directed Kenneth C. Butin and Michael K. Butin (Butins), doing business as M-K Trucking to:

(1) collect \$72,834.46 in undercharges from eight respondent shippers;
 (2) pay an undercharge fine in the amount of \$81,154.62; and (3) pay a punitive fine of \$5,000. The undercharge fine, in addition to the undercharges the Butins were directed to collect, included \$6,185.55 in undercharges they collected from one of the respondent shippers while the investigation was in progress and also \$2,134.61 in undercharges which they had collected but had not paid as a fine as required by an undercharge citation served on them on July 16, 1976. The fines were due and payable on or before July 15, 1979. The punitive fine has been paid. The undercharge fine has not been paid.

Counsels for the Butins have pointed out in a Petition for Modification of Decision No. 90384, an amendment thereto and various correspondence and reports, that informal attempts to collect the

undercharges have been unsuccessful and that civil actions have been filed against the individual respondent shippers for collection of the undercharges. It is requested that the ordering paragraphs of the decision be modified to clarify the requirements regarding the filing of civil actions and to extend the time within which the undercharge fine shall be paid. As to the filing of civil actions, Ordering Paragraphs 3 and 4 of the decision are clear and concise on this point. They require, in essence, that prompt legal action be taken, if necessary, and pursued diligently and in good faith, and, as stated, according to the reports filed on behalf of the Butins, civil actions have been filed for the undercharges. As to the time extension for the payment of the undercharge fine, counsels for the Butins asserted that the Butins do not have the financial resources to pay the fine until the undercharges are collected, and it will take time to conclude the civil actions. It is requested that the time period within which the undercharge fine is to be paid be amended to provide that as undercharges are collected from the individual shipper respondents, the amount so collected shall be paid toward the fine within 30 days of collection. In this regard, it is to be noted, as pointed out above, that the Butins have heretofore collected a total of \$8,320.16 in undercharges from one of the shippers in connection with the undercharge citation and that this amount of the undercharge fine is not a part of the civil actions which involve only the undercharges the Butins were directed to collect by the decision.

We find that: (1) the requested extension of time should be granted insofar as it relates to the amount of the undercharge fine based on the undercharges the Butins are directed to collect by Decision No. 90384; (2) the amount of the undercharge fine based on the undercharges the Butins have heretofore collected should be paid by them promptly and in no event later than 40 days after the

effective date of this order; and (3) since the undercharge fine is now overdue, the extension of time order which follows should be made effective on the date it is issued.

We conclude that Ordering Paragraph 2 of Decision No. 90384 should be modified as provided in the order which follows:

IT IS ORDERED that:

1. The time period within which Kenneth C. Butin and Michael K. Butin (Butins), doing business as M-K Trucking, shall pay the \$81,154.62 fine specified in Ordering Paragraph 2 of Decision No. 90384 is modified as follows:

- a. \$8,320.16 of the fine shall be paid promptly and in no event later than 40 days after the effective date of this order.
- b. The balance of the fine may be paid in installments as follows: As undercharges are collected from each of the individual respondent shippers, the amount so collected shall be paid toward the fine within 30 days after collection.

2. The Butins and their attorneys shall diligently and in good faith prosecute the law suits that have been filed against the shipper respondents for collection of the undercharges specified in Ordering Paragraph 3 of Decision No. 90384.

3. In all other respects, Decision No. 90384 shall remain in full force and effect.

The effective date of this order is the date hereof.

Dated AUG 19 1980, at San Francisco, California.

John E. Guyon
President
Hermon L. Sturgeon

Clair J. Delisle
Donald W. Jensen
Commissioners

Commissioner Richard D. Gravello, being necessarily absent, did not participate in the disposition of this proceeding.