

ORIGINAL

Decision No. 92969 APR 21 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates and practices of Wilbur G. Enderson, dba TETA CORPORATION, a California corporation, and Hyampom Lumber Company, dba Shasta Block, a California corporation.

OII No. 75
(Filed July 2, 1980)

Lynn Theilacker Carew, Attorney at Law, and Edwin 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 Teta Corporation (Teta)^{1/} for the purpose of determining whether Teta charged less than applicable minimum rates in connection with transportation performed for Hyampom Lumber Company (Hyampom), a corporation, doing business as Shasta Block.

Public hearing was held before Administrative Law Judge Arthur M. Mooney in San Francisco on February 3, 1981. The matter was submitted on February 24, 1981 upon the filing of a written stipulation jointly executed by Teta, Hyampom, and the Commission staff. It was received in evidence as Exhibit 1. The following data included with and referred to in the stipulation was also received in evidence as exhibits:

1/ Teta Corporation is the correct name of the respondent carrier.

1. Exhibit 1-A - economic profile of Teta.
2. Exhibit 1-B - photostatic copies prepared by a staff representative of invoices and other documents in the files of Teta relating to transportation performed for Hyampom during the first half of 1979.
3. Exhibit 1-C - rate statement prepared by a staff rate expert showing \$36,596.63 in undercharges for the transportation covered by Exhibit 1-B.

No evidence was taken at the hearing. A statement was made by staff counsel outlining the material to be included in the stipulation. It covers all issues in this proceeding. The stipulation suggests that Teta be required to collect the undercharges from Hyampom set forth in Exhibit 1-C and pay a fine in the amount thereof plus a punitive fine of \$1,000. It is further suggested therein that because of the depressed condition of the lumber industry in northern California and the adverse effect this has had particularly on the financial and credit position of Teta and also on the financial condition of Hyampom that:

1. Teta be authorized to pay the \$1,000 punitive fine on an installment basis.
2. Hyampom, in accordance with its agreement in the stipulation, be authorized to pay the undercharges directly to the Commission on an installment basis in lieu of the collection of undercharges and payment of a fine in the amount thereof by Teta.

Additionally, it is suggested that Teta be placed on notice that any failure by Hyampom to comply with any of the terms of the stipulation shall not relieve it from the obligations to collect the undercharges and pay the fine based thereon, provided however that should Hyampom be financially unable to make any of the installment payments, Teta may petition the Commission for relief from these obligations.

Based on a review of the stipulation and supporting documents, we concur with the resolution of the issues in this proceeding proposed therein. The volume of the rate violations and Teta's culpability in them warrant the imposition of the suggested \$1,000 punitive fine on it. All pertinent facts and issues are summarized in the findings and conclusions and a further discussion of these matters is not necessary.

Findings of Fact

1. At the time of the staff investigation referred to in Finding 2, Teta, in its for-hire carrier business, operated pursuant to radial highway common carrier and agricultural carrier permits, employed two drivers and a part-time bookkeeper, had an office and terminal in Redding, and operated two tractors and sets of flatbed trailers. It has been served with all applicable minimum rate tariffs, distance tables, and exception ratings tariffs. During 1978, it operated as a subhauler only, and its gross revenue from this was \$9,741. It also has a sawmill business which is at the same location as its terminal.

2. On various dates in 1979, a staff representative conducted an investigation of Teta's operations for the period January through June 1979.

3. The staff investigation disclosed rate errors by Teta in connection with the transportation of concrete building blocks, bricks, steel bars, and related building material for Hyampom during the review period. The rate errors resulted from charging less than the applicable minimum rates in Minimum Rate Tariff 2, together with failure to comply with the requirements of Items 250 (collection of charges), 255 and 256 (issuance of documents), and 257 (unit of measurement) of the tariff.

4. The transportation referred to in Finding 3 is summarized in Exhibit 1-C, and the minimum rates and charges and resulting undercharges computed by the staff and shown therein for this transportation are correct.

5. Teta charged Hyampom less than the lawfully prescribed minimum rates in the instances set forth in Exhibit 1-C resulting in undercharges in the total amount of \$36,596.63.

6. Teta filed Quarterly Report of Gross Operating Revenue reports with the Commission for the two quarters covered by the staff investigation but did not include the gross operating revenue for the transportation in issue in the reports or pay the applicable Highway Carriers' Uniform Business License Tax and Transportation Rate Fund fees on this revenue to the Commission.

7. The current depressed economic condition in the lumber industry in northern California has had a negative impact particularly on the financial and credit condition of Teta and also on the financial position of Hyampom.

Conclusions of Law

1. Teta violated Sections 3664, 3667, 3668, 3737, 4304, and 5003.1 of the Public Utilities Code.

2. Teta should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$36,596.63 and, in addition thereto, should pay a fine pursuant to Section 3774 in the amount of \$1,000.

3. Because of the current depressed financial condition of both Teta and Hyampom referred to in Finding 7:

- a. Hyampom should be authorized, in accordance with its agreement in the stipulation in Exhibit 1, to pay the \$36,596.63 in undercharges set forth in Finding 5 directly to the Commission on behalf of Teta in lieu of paying this amount to Teta and Teta paying it to the Commission as a fine.

- b. Teta should be authorized to pay the \$1,000 fine and Hyampom should be authorized to pay the \$36,596.63 fine on behalf of Teta in accordance with the installment schedules and conditions set forth in the order which follows.

4. Teta should be directed to pay to the Commission all Highway Carriers' Business License Tax and Transportation Rate Fund fees on the gross revenue for the transportation referred to in Finding 4.

5. Teta should be directed to cease and desist from violating applicable tariff rates and rules.

The Commission expects that Teta will proceed promptly, diligently, and in good faith to pursue all reasonable measures to assure that the undercharges are paid by Hyampom 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 Teta or its attorney has not been diligent, or has not taken all reasonable measures to assure that all undercharges are paid, 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. Teta Corporation (Teta) shall pay a fine of \$1,000 to this Commission pursuant to Public Utilities Code Section 3774 in not less than twelve consecutive monthly payments of not less than \$83.26 the first month and \$83.34 each month thereafter, with the first payment due on the fifth day of the second month following the effective date of this order and each additional payment due on the fifth day of each succeeding month. In the event any installment is not paid by the due date set forth in the schedule, Teta shall pay interest at the rate of seven percent per annum on the unpaid balance of the fine until all delinquent installments have been paid in full. Any installment may be paid before it is due.

2. Teta shall pay a fine to this Commission pursuant to Section 3800 of the Public Utilities Code of \$36,596.63 in accordance with the provisions of Ordering Paragraph 4.

3. Subject to the provisions of Ordering Paragraph 4, Teta shall take such action, including legal action instituted within the time prescribed in Section 3671 of the Public Utilities Code, as may be necessary to collect the undercharges set forth in Finding 5.

4. The undercharges and fine referred to in Ordering Paragraphs 3 and 2, respectively, shall be collected and paid in accordance with the following agreement by Hyampom Lumber Company (Hyampom), a corporation, doing business as Shasta Block, set forth in the stipulation in Exhibit 1:

- a. Hyampom shall pay the \$36,596.63 in undercharges directly to the Commission on behalf of Teta in lieu of paying this amount to Teta and Teta paying the same amount to the Commission as a fine.

- b. Hyampom shall pay the \$36,596.63 to the Commission in not less than 37 consecutive monthly payments of not less than \$1,000 each for the first 36 months and a final payment of not less than \$596.63, with the first payment due on the fifth day of the second month following the effective date of this order and each additional payment due on the fifth day of each succeeding month. Any installment may be paid before it is due.
- c. Each payment by Hyampom shall be made payable "to the order of the California Public Utilities Commission" and shall be transmitted directly to the California Public Utilities Commission at 350 McAllister Street, San Francisco, California 94102.
- d. Hyampom shall timely mail a copy of each monthly payment transmittal letter to Teta's attorneys, Handler, Baker, Greene & Taylor, 100 Pine Street, Suite 2550, San Francisco, California 94111.

5. Any failure by Hyampom to comply with the payment schedule and conditions set forth in Ordering Paragraph 4 shall not relieve Teta of the obligations imposed on it by Ordering Paragraphs 3 and 2 to collect and pay any remaining balance of the undercharges and fine specified therein, respectively. Should this occur, the balance of the unpaid undercharges and fine based thereon shall be immediately due and payable; however, should the default be due to Hyampom's financial inability to make payments, Teta may petition the Commission for appropriate relief.

6. Teta shall pay to the Commission within forty days after the effective date of this order all unpaid Highway Carriers' Business License Tax and Transportation Rate Fund fees plus applicable penalties thereon for the transportation referred to in Finding 4.

7. Teta shall cease and desist from violating applicable tariff rates and rules.

The Executive Director of the Commission shall cause personal service of this order to be made upon respondent Teta and cause service by mail of this order to be made upon respondent Hyampom. The effective date of this order as to each respondent shall be thirty days after completion of service on that respondent.

Dated APR 21 1981, at San Francisco, California.

John E. Guyer
President
Richard A. Farrell
Lawrence W. Jones
Victor C. ...
Patricia C. ...
Commissioners