

ORIGINAL

Decision 93876 DEC 15 1981

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)
Larry E. Bowman, an individual)
doing business as Larry E. Bowman)
Trucking, and J.B.A. Company, a)
corporation.)

OII 90
(Filed June 16, 1981)

Larry E. Bowman, for himself, respondent.
Alberto Guerrero, Attorney at Law, for
the Commission staff.

O P I N I O N

This is an investigation into the operations, rates, charges, and practices of Larry E. Bowman (Bowman), an individual doing business as Larry E. Bowman Trucking, and J.B.A. Company (J.B.A.), a corporation, for the purpose of determining the following:

1. Whether respondent Bowman in performing transportation for respondent J.B.A. violated Public Utilities (PU) Code §§ 3664, 3667, and 3737 by assessing rates and charges less than the minimum rates and charges prescribed by the Commission in Items 325 and 390 of Minimum Rate Tariff 7-A (MRT 7-A).
2. Whether respondent J.B.A. has paid less than the applicable rates and charges for the transportation performed by respondent Bowman.
3. Whether any sum of money is now due and owing to respondent Bowman from respondent J.B.A.

4. Whether respondent Bowman should be ordered to collect from respondent J.B.A. the difference between the charges billed or collected and the charges due under MRT 7-A.
5. Whether respondent Bowman should be ordered to pay to any or all of the subhaulers who performed services in connection with the shipments by respondent J.B.A., or any other person, the difference between the amounts paid to them by respondent Bowman and the amounts due them under the applicable minimum rate tariff.
6. Whether respondent Bowman has violated the bonding requirements of the Commission's General Order 102.
7. Whether respondent Bowman should be ordered to cease and desist from any and all unlawful operations and practices.
8. Whether the operating authority of respondent Bowman should be canceled, revoked, suspended, or, as an alternative, whether a fine should be imposed under PU Code § 3774.
9. In the event undercharges are found to exist, whether a fine in the amount of the undercharges should be imposed on respondent Bowman under PU Code § 3800.
10. Whether any other orders that may be appropriate should be entered in the lawful exercise of the Commission's jurisdiction.

A hearing was held before Administrative Law Judge Pilling on October 6, 1981 at Los Angeles. Respondent J.B.A. did not formally appear.

At all times pertinent Bowman operated under permits as a radial highway common carrier, a dump truck carrier, and an agricultural carrier and had been served with and was in possession of MRTs 2, 7-A, 15, Exception Ratings Tariff 1, and Distance Table 8. He employed two drivers and operated one tractor, one dump truck,

one set of bottom dump trailers, one semi-end dump trailer, and one transfer-type dump trailer. During 1979 he grossed \$875,000 from trucking operations.

Between August and December 1979 inclusive, he transported approximately 400 truckloads of petroleum coke in bulk for the account of J.B.A. Company of Long Beach from Union Chemicals Division of Union Oil Company of California at Callender to the Monolith Portland Cement Co. at Monolith, a distance of 159 actual miles. He used subhaulers to perform the transportation though he had no subhauler bond on file as required by General Order 102. The minimum rate applicable to the subject transportation was found in MRT 7-A, Item 325.

At the hearing Bowman and the staff counsel presented a written stipulation signed by Bowman and the staff counsel which was introduced into evidence (Exhibit 4) at the request of Bowman and the staff counsel, and read as follows:

"Stipulation of Facts, Issues
and Recommended Fines

"Respondent LARRY E. BOWMAN TRUCKING, and the staff of the California Public Utilities Commission hereby stipulate to the following:

- "1. That on various dates in 1980 the staff of the Public Utilities Commission conducted an investigation into the operations, rates and practices of LARRY E. BOWMAN TRUCKING.
- "2. That investigation disclosed violations by LARRY E. BOWMAN TRUCKING of Section Nos. 3664, 3667 and 3737 of the Public Utilities Code by assessing rates and charges less than the minimum rates and charges prescribed by the Commission in Items 325 and 390 of the Minimum Rate Tariff 7-A.

- "3. That investigation disclosed LARRY E. BOWMAN TRUCKING violated the bonding requirements of the Commission's General Order No. 102.
- "4. That the investigation resulted in the issuance of O.I.I. 90 by the California Public Utilities Commission on June 16, 1981.
- "5. That the documents described as Carrier Profile of LARRY E. BOWMAN TRUCKING, and attached hereto as Exhibit 1 is true and correct.
- "6. That the volume containing documents covering transportation which is subject to O.I.I. 90, attached herein as Exhibit 2, is true and correct.
- "7. That the evidentiary materials set forth in a document described as a "Summary of Certain Shipping Data Covering Transportation Performed by LARRY E. BOWMAN TRUCKING for transportation performed for J.B.A. Company, together with Statements as to the Applicable Minimum Rates for Shipment Reflected by Such Data," attached hereto as Exhibit 3, reflects undercharge violations totalling \$15,312.63 which respondent LARRY E. BOWMAN TRUCKING admits he did not collect, and that the staff and LARRY E. BOWMAN TRUCKING agree that LARRY E. BOWMAN TRUCKING should be ordered to collect from respondent J.B.A. Company, the difference between the charges billed or collected and the charges due under Minimum Rate Tariff No. 7-A.
- "8. That the evidentiary materials contained in Exhibits 1, 2, and 3 may be the basis for a decision and order in O.I.I. 90.
- "9. That Ordering Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of O.I.I. 90 should be answered in the affirmative.

- "10. That this stipulation and the violations agreed upon herein are applicable only to the transportation shown in Exhibit 2 and to no other transportation.
- "11. That by virtue of LARRY E. BOWMAN TRUCKING's culpability in the violations agreed to in this stipulation and considering all of the circumstances of this case, the Commission staff and LARRY E. BOWMAN TRUCKING agree that LARRY E. BOWMAN TRUCKING should pay and be ordered to pay a punitive fine of \$1500.00 pursuant to Section 3774 of the Public Utilities Code, which shall be payable in 10 equal monthly payments beginning 30 days after the effective date of the Commission's decision in O.I.I. 90."

Findings of Fact

1. Bowman conducted operations under a dump truck carrier permit.
2. In the conduct of such operations he transported, using subhaulers, approximately 400 truckloads of petroleum coke in bulk for the account of J.B.A. from Union Chemicals Division of Union Oil Company of California at Callender to the Monolith Portland Cement Co. at Monolith, a distance of 159 actual miles.
3. Bowman had no subhaul bond on file.
4. The minimum rates applicable to the subject transportation are found in MRT 7-A, Item 325.
5. Bowman charged and collected less than the applicable minimum rates in performing the subject transportation.
6. Bowman undercharged the shipper J.B.A. a total of \$15,312.63 for performing the subject transportation.
7. The facts set out in Exhibit 4 are true and correct.

8. No facts were presented in mitigation of the violations described in Finding 5, and respondent Bowman has not challenged the \$1,500 fine under § 3774 recommended by our staff. A fine in the amount of \$1,500 is reasonable.

Conclusions of Law

1. Bowman violated PU Code §§ 3664, 3667, and 3737 in hauling for J.B.A. by undercharging J.B.A. in the total amount of \$15,312.63.

2. Bowman should be ordered to collect from J.B.A. the amount specified in Conclusion 1.

3. Bowman violated the bonding requirements of the Commission's General Order 102.

4. Bowman should be ordered to cease and desist from any and all operations and practices in violation of the PU Code.

5. Bowman should pay a fine of \$15,312.63 levied under PU Code § 3800.

6. Bowman should pay a fine of \$1,500 levied under PU Code § 3774.

Respondent Bowman should promptly take all reasonable actions to collect the undercharges. If necessary he should file timely complaints according to PU Code § 3671. The Commission staff will investigate respondent's compliance. If it believes that Bowman or his attorney has not acted in good faith, the Commission will reopen this proceeding to determine whether to impose sanctions.

O R D E R

IT IS ORDERED that Larry E. Bowman shall:

1. Pay fine of \$1,500 to this Commission under PU Code § 3774 on or before the 40th day after the effective date of this order.

2. Pay 7% annual interest on the fine, beginning when the payment is delinquent.
3. Pay a fine to this Commission under PU Code § 3800 of \$15,312.63 on or before the 40th day after the effective date of this order.
4. Take such action, as may be necessary to collect the undercharges set forth in Finding 6, including timely legal action under PU Code § 3671.
5. Notify the Commission in writing upon collection.
6. Promptly take all reasonable steps to collect the undercharges.
7. File with the Commission on the first Monday of each month a report of any undercharges remaining uncollected 60 days after the effective date of this order, specifying the action taken to collect them and the result of such action, until they have been collected in full, or until further order of the Commission. Failure to file any such monthly report within 15 days after the due date shall result in the automatic suspension of the operating authority until the report is filed.
8. Not charge or collect less than minimum rates set by the Commission.
9. Not employ subhaulers unless they comply with the bonding requirements of General Order 102.
10. Cease and desist from any and all operations and practices in violation of the PU Code.

IT IS FURTHER ORDERED that Larry E. Bowman may elect to pay the fine levied in Ordering Paragraph 1 in 10 equal consecutive monthly payments of \$150 each beginning 30 days after the effective date of this order; provided, however, that if any installment payment is not paid when due, then the entire balance of the fine is due and owing.

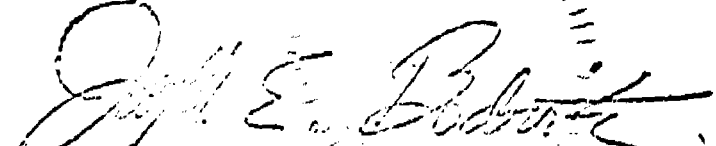
The Executive Director shall have this order personally served upon respondent Larry E. Bowman and served by mail upon respondent J.B.A. Company.

The order shall become effective for each respondent 30 days after the order is served.

Dated DEC 15 1981, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. CRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. CREW
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Belevitz, Executive Director
