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Decision 96-02-007 February 7, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation and)
Order to Show Cause into whether the)
Operating Authority (T-145,100) of)
Orlindo Diaz and Deborah Jean Payne,)
doing business as O & D TRUCKING,)
should be Revoked.)

I.95-10-003
(Filed October 5, 1995)

ORIGINAL

OPINION

This decision revokes the operating authorities granted to Orlindo Diaz and Deborah Jean Payne (respondents), doing business as O & D Trucking (T-145;100), for violating the Public Utilities (PU) Code and disregarding a Commission order.

Background

Respondents are engaged in the business of for-hire transportation of property over the public highways of this state. Respondents operate as a highway permit carrier pursuant to a highway contract permit issued in 1984 and a dump truck permit issued in 1985.

The Commission instituted its first investigation into the operations of the respondents in Investigation (I.) 93-09-025. The purpose of the first investigation was to determine whether respondents had violated certain sections of the PU Code, General Orders (GO), and their Minimum Rate Tariff (MRT). The investigation was expanded in Decision (D.) 93-12-050 to determine whether respondents had violated additional sections of the PU Code. Ultimately, respondents and Commission staff reached a stipulation that was adopted by the Commission in D.94-05-049. In their stipulation, the respondents admitted to the following:

1. Operating as a highway permit carrier during a period when their operating authority was under suspension;

2. Engaging subhaulers without having a bond on file;
3. Failing to pay subhaulers within the time limits required by GO 102-H;
4. Failing to execute written hourly rate agreements as required by Item 360 of MRT 7-A;
5. Engaging employee drivers without having a certificate of workers' compensation on file with the Commission; and
6. Failing to appear and produce records as requested by an authorized employee of the Commission.

In the stipulation adopted by the Commission in D.94-05-049, respondents agreed to the following:

1. A two-year probation during which staff would monitor respondents' compliance with Commission regulations;
2. A stayed 30-day suspension of O & D's operating authority, with the suspension being lifted after successful compliance by O & D Trucking during the two-year period of probation;
3. Comply with the provisions of GO 102-H, MRT 7-A, and Commission regulations governing the filing of a certificate of workers' compensation for their employees;
4. Produce records when requested by authorized Commission representatives; and
5. Pay a \$4,000 fine pursuant to Section 3774(i) of the PU Code in 13 monthly installments of \$300 and a final installment of \$100.

D.94-05-049 reinforced the stipulation by specifically ordering the respondents to pay a fine of \$4,000 and placing the respondents on probation for two years.

Following the issuance of D.94-05-049, the respondents' operating authorities were suspended by the Commission on July 13, 1994, for failing to pay fees for the first quarter of 1994.¹ The respondents' operating authorities have remained suspended ever since.

After making payments totaling \$600 in July 1994, respondents failed to pay the \$3,400 balance owing on the \$4,000 fine ordered in D.94-05-049,² causing the Safety and Enforcement (S&E) Division staff to investigate respondents' compliance with the terms of the stipulation and D.94-05-049. At the conclusion of their investigation, S&E provided the Commission with a sworn declaration stating their findings that O & D Trucking was violating D.94-05-049 and the PU Code. As a result of the S&E's investigation and declaration, the Commission issued I.95-10-003, its second formal investigation into the operations and practices of O & D Trucking. Both Diaz and Payne were named as respondents to I.95-10-003. The purpose of I.95-10-003 was to determine whether respondents had engaged in the following actions:

1. Violated Sections 3571 and 3611 of the PU Code by performing highway carrier operations without a valid permit;
2. Violated Section 3775 of the PU Code by operating as a highway permit carrier

1 In a letter to O & D Trucking dated July 13, 1994, the California Public Utilities Commission (CPUC) notified O & D Trucking that their operating authorities were suspended due to failure to pay quarterly fees for the first quarter of 1994, and that O & D's operating authority would be revoked by August 12, 1994, unless the fees were paid.

2 Two letters were sent by the S&E Division to O & D Trucking advising them of their delinquency in paying the \$4,000 fine. The first letter was dated October 25, 1995, and the second dated December 13, 1994.

- during a period in which its permit was suspended;
3. Violated Sections 3705 and 3706 of the PU Code by failing to appear and produce carrier records as requested by an authorized employee of the Commission;
 4. Violated Sections 5003.1 and 5003.2 of the PU Code by failing to remit quarterly fees to the Commission;
 5. Violated Section 3553 of the PU Code by failing to file with the Commission either a certificate of workers' compensation coverage or a statement under penalty of perjury that the carrier does not employ any person and is not subject to the workers' compensation laws; and
 6. Violated Section 3737 of the PU Code by failing to pay the \$4,000 fine and comply with the order of the Commission in D.94-05-049.

I.95-10-003 was also instituted for the purpose of allowing the respondents to show cause why their highway contract carrier and dump truck carrier permits should not be revoked for what appeared to be ongoing violations of applicable laws, regulations, and Commission orders. The investigation went on to state that a hearing would be held only if the respondents submitted a written request for a hearing within 30 days from the date that I.95-10-003 was served on them. If no hearing was requested, Ordering Paragraph 3 of I.95-10-003 stated the Commission would then revoke the respondents' operating authorities for cause and with prejudice.

S&E staff member Greg H. Thompson presented the Commission with a sworn declaration regarding the results of his investigation of O & D Trucking. His declaration disclosed the following information:

- o Respondents conducted daily for-hire transportation operations between points

within California during the period when O & D's permits were and continue to be suspended.

- o Respondents repeatedly failed to provide documents requested by various CPUC personnel.
- o Respondents failed to pay any fees since the first quarter of 1994.
- o The State Fund Compensation and Insurance Company, on behalf of O & D Trucking, submitted to the CPUC a certificate showing O & D Trucking had obtained worker's compensation coverage. However, O & D Trucking had also submitted a declaration stating it had no employees. Despite repeated requests and efforts by staff, respondents failed to either cancel their workers' compensation certificate or withdraw their statement on file that they did not have any employees.
- o In D.94-05-049, the Commission ordered respondents to pay a fine of \$4,000. S&E's declaration disclosed that after making initial payments totaling \$600 in July 1994, respondents made no further payment.

I.95-10-003 ordered that the S&E's declaration supporting the investigation to be placed in the formal file of the proceeding, and that the investigation and S&E's declaration were to be served on the respondents or, if personal service was not possible, by sending these documents by certified mail to the last known address of the respondents. Both Diaz and Payne were identified as residing at the same address, 11794 Mountain View Road, Tracy, California 95376. The investigation and S&E's declaration were served on respondents on October 20, 1995. Copies of the investigation and declaration were also mailed to respondents. Following receipt of these documents, the respondents

made no request for a hearing, and presented no rebuttal to the sworn declaration of S&E.

Discussion

The Commission pursuant to the California Constitution, Article XII, by PU Code Section 3501 et seq. (The Highway Carriers' Act), regulates motor carriers of property on the public highways. These statutes require carriers, among other things, to operate only when there is in force a valid highway carrier permit (Sections 3571, 3611, and 3775); to file a gross operating revenue statement and pay fees to the Commission quarterly (Sections 5003.1 and 5003.2), to either file evidence of worker's compensation coverage or a statement that the carrier does not engage employees (Section 3554); and to provide access to carrier records requested by an authorized employee of the Commission (Sections 3705 and 3706). These regulations further require that highway carriers obey every order, decision, rule, regulation, direction, demand or requirement established by the Commission pursuant to Division 2, Chapter 1 of the PU Code.

S&E's investigation disclosed that respondents operated and continue to operate during the suspension of their permits; that respondents are not in compliance with Commission regulations governing the filing of workers' compensation certificates; that respondents refused to produce records when requested by staff; and that respondents have failed to pay the Commission most of the \$4,000 fine. From this evidence we conclude that respondents violated the previously enumerated sections of the PU Code.

We have twice found the respondents to have violated statutes, once in D.94-05-049, and again in this investigation. In addition, by failing to pay the fine ordered in D.94-05-049, respondents have also violated an explicit Commission order. We will not tolerate violations of statutes and the blatant disregard of a Commission order. The pattern of continued violation by O & D Trucking constitutes good cause to revoke, with prejudice, the

respondents' operating authorities pursuant to PU Code Section 3774 and Ordering Paragraph 3 of I.95-10-003.

Findings of Fact

1. Orlindo Diaz and Deborah Jean Payne, partners, doing business as O & D Trucking (T-145,100), whose mailing address is P.O. Box 971, Tracy, California 95378, are engaged in the business of for-hire transportation of property over the public highways of this state. Respondents operate as a highway permit carrier pursuant to a highway contract permit issued in 1984 and a dump truck permit issued in 1985.

2. In I.93-09-025, the respondents admitted to violations of the PU Code, GO 102-H, and MRT 7-A.

3. Respondents' operating authorities were ordered suspended by the Commission on July 13, 1994, and have remained in suspension for failure to pay quarterly fees for the first quarter of 1994.

4. S&E submitted a sworn declaration demonstrating that respondents were continuing to violate the PU Code and had failed to comply with a Commission order.

5. Respondents were served with a copy of I.95-10-003 and the sworn declaration of S&E. Respondents made no request for a hearing and presented no rebuttal to the sworn declaration of the staff.

6. Respondents violated Sections 3571 and 3611 of the PU Code by performing highway carrier operations without a valid permit.

7. Respondents violated Section 3775 of the PU Code by operating as a highway permit carrier during a period in which its permit was suspended.

8. Respondents violated Sections 3705 and 3706 of the PU Code by failing to appear and produce carrier records as requested by an authorized employee of the Commission.

9. Respondents violated Sections 5003.1 and 5003.2 of the PU Code by failing to remit quarterly fees to the Commission.

10. Respondents violated Section 3554 of the PU Code by failing to file with the Commission either a certificate of workers' compensation coverage or a statement under penalty of perjury that the carrier does not employ any person and is not subject to the workers' compensation laws;

11. Respondents disobeyed a Commission order by failing to pay \$3,600 of the \$4,000 fine ordered by Commission in D.94-05-049.

Conclusions of Law

1. No hearing is necessary.
2. Permit T-145,100 and associated operating authorities should be revoked for cause and with prejudice.
3. The public interest requires that the revocation of Permit T-145,100 and associated operating authorities be made effective immediately.

O R D E R

IT IS ORDERED that:

1. Permit T-145,100 and associated operating authorities are revoked with prejudice.
2. The Executive Director shall cause a certified copy of this order to be personally served on the respondents, Orlindo Diaz and Deborah Jean Payne, at 11794 Mountain View Road, Tracy,

California 95376 or, after due diligence and effort if personal service is not possible, by sending it by certified mail to the last known physical address supplied by the respondents to the Commission.

This order is effective today.

Dated February 7, 1996, at San Francisco, California.

DANIEL Wm. FESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners