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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates and practices of Gilbert Moreno and Thomas J. Vance, a partnership doing business as MORENO TRUCKING, of ROBERT LEE TONN, an individual, and of E. F. MITCHLER COMPANY, a California Corporation, shipper respondent,

Respondents.

ORIGINAL
PUBLIC UTILITIES COMMISSION
JANUARY 10, 1992
SAN FRANCISCO OFFICE
I.92-01-004

ORDER INSTITUTING INVESTIGATION

Gilbert Moreno and Thomas J. Vance, a California Partnership, doing business as MORENO TRUCKING (MORENO), whose mailing address is 1345 Cory Lane, Manteca, California 95336, is engaged in the business of transporting property over the public highways of this state for compensation and was issued a dump truck carrier permit on September 8, 1989; and

ROBERT LEE TONN, an individual (TONN), whose mailing address is P. O. Box 356, Lodi, California 95240, is engaged in the business of transporting property over the public highways of this state for compensation, and was issued a dump truck carrier permit initially issued in 1970, later revoked in February of 1989 and subsequently re-instated in November, 1989.

It appears that shipper respondent E. F. MITCHLER COMPANY (MITCHLER), a California Corporation, whose mailing address is 400 South Lincoln Street, Stockton, California 95203, has received services from the aforementioned carriers in the form of transportation of property over the public highways of this state for compensation, and as such is a shipper of property.

It further appears that while providing this transportation the respondent carriers may have violated Sections

3575, 3611, 3664, 3667, and 3668, of the Public Utilities Code, General Orders 102-H and 130, as well as the provisions of Minimum Tariff Rate (MRT) 7A, Items 125, 170, 190 and 310.

Good cause appearing: therefore,

IT IS ORDERED that an investigation on the Commission's own motion is hereby instituted into the operations, rates, charges and practices of carrier respondents TONN and MORENO for the purpose of determining:

1. Whether respondents TONN and/or MORENO, in transporting rock and gravel for respondent shipper MITCHLER, violated Sections 3664, 3667, 3668 and 3737 of the Public Utilities Code by failing to assess and collect the applicable minimum rates as set forth in Minimum Rate Tariff (MRT) 7A.

2. Whether respondents TONN and/or MORENO, in transporting rock and gravel for respondent shipper MITCHLER, violated Section 3611 of the Public Utilities Code by operating as for-hire dump truck carriers during period of license revocation or prior to the issuance of such authority.

3. Whether respondents TONN and/or MORENO violated Sections 3664, 3667, 3668 and 3737 of the Public Utilities Code and General Order 130 by entering into an illegal subhaul agreement which allowed payments less than the applicable rates and charges of MRT 7A for the subhaul transportation of materials.

4. Whether respondent shipper MITCHLER violated MRT 7-A, Item 125 by deducting excessive equipment rental for either or both of the respondent carriers.

5. Whether respondent carriers, either or both, should be ordered to collect from the aforementioned respondent shipper the difference between the charges actually received and the applicable rates and charges.

6. Whether the respondent carriers, either or both, should be ordered to collect from the aforementioned respondent shipper the difference between the equipment rental actually charged and the applicable charges allowed in MRT 7-A.

7. Whether, in the event sums less than applicable rates and charges are found to have been charged, collected, or received, a fine in the amount of such undercharges should be imposed upon respondent carriers, each or both of them.

8. Whether, either or both of the respondent carriers' operating authority should be cancelled, revoked, or suspended, or in the alternative, a fine imposed pursuant to Section 3774 of the Public Utilities Code up to \$20,000 on either or both of them.

9. Whether respondent carriers, either or both of them, should be ordered to cease and desist from any unlawful operations or practices.

10. Whether any other orders that may be appropriate should be entered in the lawful exercise of the Commission's jurisdiction.

11. The scope of the investigation includes, but is not limited to transportation represented by the freight bills listed in Appendices A and B.

This matter will be set for hearing before the Commission at a time and place to be noticed later, at which time all interested parties may appear and be heard.

The Executive Director is directed to cause a certified copy of this order to be served on both respondent carriers and the respondent shipper, as shown in Appendix C. The Executive Director is also directed to cause a certified copy of this OII to be served personally forthwith on the respondent carriers.

This order is effective today

Dated January 10, 1992, at San Francisco, California

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

DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners


NEAL J. SHULMAN, Executive Director

APPENDIX A
Robert Lee Tonn

FREIGHT BILL #	DATE	FREIGHT BILL #	DATE
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6342	12/02/88	6433	1/26/89
6365	1/04/89	6389	1/27/89
6366	.	6435	.
6409	.	6436	2/01/89
6510	.	6394	2/06/89
6367	1/06/89	6395	.
6368	.	6437	2/07/89
6411	.	6396	.
6412	.	6397	.
6369	1/12/89	6398	2/08/89
6413	.	6399	.
6414	.	6400	2/13/89
6415	.	6501	.
6370	1/13/89	6502	2/15/89
6416	.	6503	.
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6418	.	6505	2/16/89
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6420	1/16/89	6507	.
6421	.	6508	.
6371	1/17/89	6509	.
6374	1/18/89	6438	2/21/89
6372	.	6439	2/22/89
6377	.	6510	.
6422	.	6511	.
6423	.	6440	2/23/89
6376	1/19/89	6512	.
6425	.	6513	.
6375	.	6514	.
6424	.	6515	2/24/89
6378	1/20/89	6441	2/27/89
6379	.	6442	.
6426	.	6517	.
6427	.	6518	.
6380	1/21/89	6519	.
6428	.	6443	2/28/89
6429	1/23/89	6520	.
6430	1/24/89	6521	.
6381	.	6444	3/01/89
6382	.	6522	.
6383	1/25/89	6523	3/03/89
6384	.	6524	.
6385	.	6525	3/13/89
6431	.	6526	3/14/89
6432	.	6527	.
6387	1/26/89	6445	3/15/89
6388	.	6528	.

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6870	10/05/89	7072	10/18/89
6989	"	7073	"
7006	"	7154	"
7007	"	6879	"
7051	"	7013	"
7052	"	7155	"
7953	"	6880	10/19/89
7054	10/06/89	7014	"
7055	"	7015	"
7056	"	7156	"
6871	"	6881	"
6990	"	7074	"
7008	"	7075	"
6872	10/09/89	7157	"
6991	"	7076	10/20/89
7009	"	7077	"
7010	"	6882	"
7011	"	7016	"
7057	"	7158	"
7058	"	7159	"
7059	10/10/89	6883	10/23/89
7060	"	6884	"
6873	"	7160	"
7012	"	7078	"
6874	10/11/89	6885	10/24/89
6903	"	7017	"
7061	"	7018	"
7062	"	7019	10/26/89
7063	10/12/89	7020	"
7064	"	7021	10/27/89
6875	"	7022	"
7151	"	7079	"
6876	10/13/89	7080	"
7065	"	7081	"
7066	"	7082	10/30/89
7067	10/16/89	6993	"
7068	"	7023	"
6877	"	7024	"
7152	"	7025	"
6878	10/17/89	7165	"
7069	"	6886	10/31/89
7153	"	7162	"
7070	"	6994	"
7071	"	7084	"

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APPENDIX B
Moreno Trucking

FREIGHT BILL # =====	DATE =====	FREIGHT BILL # =====	DATE =====
000713	5/01/89	886724	5/12/89
000731	"	22205	"
47813	"	22209	"
47819	"	22213	"
47846	5/02/89	3117	5/15/89
47876	"	22215	"
47858	"	22220	"
47865	"	68274	"
47882	"	22234	"
47854	"	22245	"
47889	"	22239	"
001108	5/03/89	22249	5/16/89
001188	"	22255	"
001256	"	68288	"
54145	"	22276	"
001342	5/04/89	22281	"
001429	"	22286	5/17/89
001485	"	22287	"
001537	"	22290	"
001581	"	22293	"
895067	5/05/89	22299	"
895095	"	22309	"
65786	"	22315	"
895357	"	22321	"
895453	"	22327	"
895636	5/08/89	22333	"
895711	"	22335	5/18/89
885500	"	22338	"
885585	"	22342	"
885634	5/09/89	882892	"
885720	"	22354	"
885817	"	22360	"
885923	"	883069	5/19/89
885991	"	22375	"
886090	5/10/89	22382	"
22080	"	883214	"
22088	"	22395	"
22093	"	22400	"
22097	"	3178	5/22/89
22103	"	22411	"
22108	"	22414	"
22121	"	22416	"
886358	5/11/89	22418	"
22128	"	22420	"
22141	"	22424	"
68083	"	883477	5/23/89
3105	"	22430	"

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69522	8/10/89	60080	8/22/89
55172	8/11/89	60096	.
68315	.	60106	.
68328	.	60124	8/23/89
55181	8/14/89	60130	.
55199	.	60139	.
55218	.	60166	.
55239	.	60182	.
55254	.	60194	.
57003	.	60209	.
57023	.	60222	8/24/89
69552	.	60234	.
57934	8/15/89	60250	.
57042	.	60259	.
57063	.	60275	.
57092	.	60288	.
57120	.	70067	8/28/89
57147	.	289536	.
57167	8/16/89	60408	.
57186	.	60419	.
57199	.	60430	.
69567	.	60447	8/29/89
57237	.	60449	.
54247	.	60451	.
57257	8/17/89	60461	.
57262	.	60467	.
57276	.	60473	.
69584	.	60477	.
57331	.	60489	8/30/89
57349	.	60490	.
57360	8/18/89	60497	.
57368	.	60503	.
57378	.	60513	.
57388	.	60518	.
57396	.	60524	.
57404	.	60530	8/31/89
57410	.	60533	.
57419	.	347651	.
57428	8/21/89	60560	.
57443	.	60568	.
57449	.	60576	.
57471	.	60582	.
57495	.	4215	9/05/89
60001	.	70149	.
60013	.	60644	.
60020	8/22/89	348013	.
60033	.	70162	9/06/89
60045	.	70164	.
60061	.	60706	.

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APPENDIX C
RESPONDENT CARRIERS

Gilbert Moreno and
Thomas J. Vance, a partnership, dba:
MORENO TRUCKING
1345 Cory Lane
Manteca, CA 95336

T-163,970

ROBERT LEE TONN, an individual
P. O. Box 356
Lodi, CA 95240

T-77,538

RESPONDENT SHIPPER

E. F. MITCHLER COMPANY
Robert W. Klein, President
400 South Lincoln
Stockton, CA 95203

T-68,970