

ORIGINAL

Decision No. 43336

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations, rates) and practices of SALVADOR GOMEZ, ROBERT ) Case No. 5111  
D. RUEDA and PERFECTO ELIZONDO, doing )  
business as UNITED PRODUCE COMPANY. )

Salvador Gomez, for respondents.  
Harold J. McCarthy, for Field Division, Public Utilities  
Commission of the State of California

O P I N I O N

The purpose of this proceeding - an investigation instituted on the Commission's own motion - is to determine whether Salvador Gomez, Robert D. Rueda and Perfecto Elizondo, doing business as United Produce Company, have violated or are violating Sections 10, 12(a) and 13-5/8 of the Highway Carriers' Act and whether a radial highway common carrier permit held by said respondents should be cancelled, revoked, or suspended.

A public hearing was held before Examiner Bradshaw at San Francisco.

Sections 10 and 12(a) of the Highway Carriers' Act provide, among other things, that it shall be unlawful for any carrier, such as respondents, to charge or collect rates or charges less than the minimum rates or charges or greater than the maximum rates and charges established or approved by the Commission. Section 13-5/8 of the same Act provides, among other things, that each carrier subject to its provisions shall be bound to observe any tariff, decision or order applicable to such carrier after service thereof.

Respondents are engaged in highway carrier operations pursuant to Radial Highway Common Carrier Permit No. 54-3195, transporting principally fruits and vegetables from Tulare County to the Los Angeles, San Francisco and Oakland markets, with occasional hauls

to Bakersfield and San Jose. They were served with a copy of Highway Carriers' Tariff No. 8 and Distance Table No. 3 on September 9, 1948.

Evidence concerning discussions with respondents and examinations of their records was presented by a representative of the Commission's field division. According to the testimony of the field representative, his first contact with the respondents occurred on August 19, 1948, at which time he explained the general application of the Commission's tariff of minimum rates and charges to respondents Gomez and Rueda, and further calls at respondents' place of business were made on November 9, 1948, and May 11, 1949.

This witness further testified that on the first of his last two visits he inspected respondents' records covering shipments transported from September 9 to November 9, 1948, and recorded the information shown therein covering 13 shipments which represented "samples" of 128 similar shipments transported during the period for which the records were examined. He stated that on this occasion respondent Gomez inquired whether it was still necessary to compute charges on a weight rather than a crate basis, which was respondents' practice, and that Gomez was admonished for respondents' failure to compute charges on a weight basis as required by the applicable tariff.

The witness testified that on his last call at respondents' office freight bills covering 304 shipments which moved between April 1 and May 9, 1949, were examined and the information appearing therein with respect to 14 typical shipments was recorded on a form used for this purpose. He asserted that the shipping documents examined did not contain data required by the provisions of Highway Carriers' Tariff No. 8; that in many instances the copies of the

freight bills retained in respondents' office were illegible; and that Gomez was again admonished to assess charges on a weight basis and informed as to the necessity of showing complete information on shipping documents, as required by the tariff. According to the witness, Gomez stated that respondents could not change their practices until forced to do so, because they would lose business to competing carriers who he alleged were computing charges on a crate basis. ✓

A transportation rate expert in the employ of the Commission's rate division gave testimony concerning the results of an analysis made of the data taken from respondents' records by the field division's representative. He stated that with respect to the 13 shipments which moved between September 9 and November 9, 1948, the records failed to show the information required by the tariff and, to the extent it was possible to determine, the rates charged were less than those prescribed as minima. According to this witness, the specifications of shipping containers were not shown on the freight bills, the points of origin and destination were not indicated on the documents covering two shipments, the destination was not shown in eight instances, the applicable minimum rates and charges could not be determined in nine instances and in each case where sufficient data were available the charges assessed proved to be less than the prescribed minima.

The rate expert's testimony concerning the shipments which moved between April 1 and May 9, 1949, was substantially to the same effect. The failure to show necessary information, the assessment of charges on a crate instead of a weight basis, and an insufficient description of the commodity transported (in one instance) were referred to.

Respondent Gomez testified that he has been aware that respondents' practices are improper. He declared that growers for whom shipments are transported are unable to understand the reason for compliance with the Commission's orders and regulations; that if respondents did not compute charges on a crate basis some of the other carriers would do so, resulting in loss of business to respondents; and that the same result would occur in the event that respondents complained of the practices indulged in by their competitors. This respondent exhibited copies of a number of freight bills indicating that certain other carriers also assess freight charges on a crate rather than a weight basis.

The record in this proceeding definitely establishes that respondents' practices in the respects hereinabove indicated are in violation of the Highway Carriers' Act and orders of the Commission entered pursuant thereto. Respondents' explanation for failure to comply with the governing tariff in assessing charges and maintaining shipping records cannot be accepted as justification for treating lightly the impropriety of their course of conduct. Having ignored repeated admonitions to change their practices, respondents' attitude must be regarded as a willful failure to comply with the Commission's decisions and orders over an extended period of time. In this connection, it should be borne in mind that regulations promulgated under the Highway Carriers' Act are designed for the benefit of the shipping public and carriers alike and the requirements published in Highway Carriers' Tariff No. 8 were prescribed after full investigation and very careful consideration.

In view of all of the facts and circumstances of record in this proceeding, an order will be entered directing respondents to

cease, and desist from indulging in, the practices herein declared to be unlawful and suspending their permit to operate as a highway carrier for a period of 30 days.

O R D E R

A public hearing having been had in the above-entitled proceeding, evidence having been received and duly considered, the Commission now being fully advised and basing its order upon the findings and conclusions set forth in the preceding opinion,

IT IS ORDERED:

(1) That, with respect to shipments hereafter transported as a radial highway common carrier, Salvador Gomez, Robert D. Rueda and Perfecto Elizondo be and they are hereby directed to cease and desist from failing or refusing to assess and collect transportation charges and from failing or refusing to compile and maintain records on shipping documents in any manner whatsoever other than as authorized by the provisions of the Commission's Highway Carriers' Tariff No. 8, supplements thereto and reissues thereof.

(2) That Radial Highway Common Carrier Permit No. 54-3195, heretofore granted to Salvador Gomez, Robert D. Rueda and Perfecto Elizondo, doing business as United Produce Company, be and it is hereby suspended for a period of 30 days from and after the effective date of this order.

The Secretary is directed to cause a certified copy of this decision to be personally served upon respondents Salvador

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Gomez, Robert D. Rueda and Perfecto Elizondo.

The effective date of this order shall be 20 days after the date of such service.

Dated at San Francisco, California, this 27<sup>th</sup> day of September, 1949.

Justus J. Calmes

August D. Powell

Harold P. Kula

Herbert H. Potter  
COMMISSIONERS