

ORIGINALDecision No. 55025

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own)
 motion into the operations, rates,)
 and practices of JOHN M. VAN SURKSUM)
 and DOLORES R. VAN SURKSUM.)

Case No. 5895

John M. Van Surksum and Dolores R. Van
Surksum, in propria personae.
Hector Anninos, for the Commission staff.

O P I N I O N

This proceeding was instituted upon the Commission's own motion by the serving of an order instituting investigation upon the respondents, John M. Van Surksum and Dolores R. Van Surksum, on February 8, 1957, to determine (1) whether respondents have acted in violation of the Public Utilities Code by charging, demanding, collecting or receiving a lesser compensation for the transportation of property than the applicable charges prescribed in Minimum Rate Tariff No. 2; (2) whether respondents have acted in violation of the Public Utilities Code by failing to adhere to Item 250-A of Minimum Rate Tariff No. 2 in neglecting to collect freight charges within the period of time set forth therein; (3) whether respondents have acted in violation of the Public Utilities Code by failing to adhere to Item 255-C of Minimum Rate Tariff No. 2 in failing to issue to the shipper a shipping document bearing the prescribed information; and (4) whether any order or orders that may be appropriate should be issued in the lawful exercise of the Commission's jurisdiction.

A public hearing was held in Los Angeles on April 19, 1957, before Examiner Kent C. Rogers. Oral and documentary evidence having

been adduced and the matter having been submitted for decision, the Commission makes the following findings of fact and conclusions of law:

That respondents Dolores R. Van Surksum and John M. Van Surksum at all times mentioned herein were, and now are, the holders of Radial Highway Common Carrier Permit No. 19-49173 issued on May 13, 1955, to John M. Van Surksum and Dolores R. Van Surksum, a partnership; that respondents have been served with a copy of Minimum Rate Tariff No. 2, Distance Table No. 4 and pertinent amendments and supplements thereto, and at all times hereinafter set forth knew or should have known the contents of said tariff and distance table; that respondents transported 10 shipments of alfalfa hay from five consignors to one consignee, Woodruff Hay Company; that all of said shipments originated in the North Kern Territory (McFarland, Wasco or Cowelo); that each shipment was delivered to the Woodruff Hay Company in Bellflower, California, in the Los Angeles-Hynes Territory; that the 10 shipments are reflected on respondents' freight bills Numbers 7259, 7260, 7261, 7263, 7264, 7265, 7266, 7267, 7268 and 7269 (Exhibits 2 through 11); that respondents prepare two copies of each freight bill and retain each copy; that the freight bills contain no description of the commodities hauled; that the freight bills contain no point of destination other than the initials W.H.C. for Woodruff Hay Company; that the rate is not shown; that the commodity hauled was baled hay in each instance; that after each of the shipments was picked up it was weighed and a public weighmaster's certificate received by respondents; that each certificate shows only the date of shipment, the date the shipment was weighed, the weight of the shipment, the signature of the weighmaster and his official seal; that each shipment was delivered to the Woodruff Hay Company in the Los Angeles-Hynes Territory on the date of the freight bill or the following day;

that on the date of the delivery the Woodruff Hay Company was given the weighmaster's certificate, and no other document; that no copy of the freight bill or any other document with reference to any of said shipments, other than the weighmaster's certificate, was ever given by respondents to the Woodruff Hay Company; that for shipments delivered on August 1, 3, 8, and 10, 1956, the Woodruff Hay Company paid the respondents on August 20, 1956; and that the only record of the herein referred to operations respondents keep, other than their freight bills, is an "accounts receivable" ledger.

The evidence further shows that respondents undercharged for the transportation services shown in the following numbered freight bills (Exhibits 2 through 11) amounts as follows:

<u>Date</u>	<u>Freight Bill No.</u>	<u>Amount Charged and Collected by Respondents</u>	<u>Correct Total Charges*</u>	<u>Amount Under- charged</u>
7-26-56	7259	\$120.12	\$142.37	\$22.25
7-27-56	7260	128.83	152.69	23.86
7-30-56	7261	140.40	166.41	26.01
8--1-56	7263	132.60	157.16	24.56
8--3-56	7264	140.73	166.79	26.06
8--8-56	7265	139.56	165.40	25.84
8--9-56	7266	113.75	138.67	24.92
8-10-56	7267	146.25	173.34	27.09
8-13-56	7268	140.47	166.48	26.01
8-15-56	7269	136.50	161.78	25.28

* As per Minimum Rate Tariff No. 2,
Item 658-H and Supplement 30 thereto.

The record further shows that between July 1, 1956, and October 31, 1956, the respondents carried 29 shipments of baled hay for Woodruff Hay Company in addition to the 10 shipments specifically hereinbefore referred to, and that each such shipment showed some practices similar to those discussed herein, including undercharges and failures to comply with the provisions of Items 250-A and 255-C of Minimum Rate Tariff No. 2.

The Commission having considered the evidence of record and having found facts as hereinbefore set forth, concludes that John M. Van Surksum and Dolores R. Van Surksum have violated the provisions of Minimum Rate Tariff No. 2, particularly Item 250-A, and Section 3737 of the Public Utilities Code, in that they failed to present freight bills to the shipper within seven calendar days from the first 12 o'clock midnight following delivery of the freight, excluding Sundays and holidays; in that they charged and received a lesser compensation for the transportation of freight than the applicable charges prescribed in Minimum Rate Tariff No. 2, in violation of Sections 3664, 3667, 3668 and 3737 of the Public Utilities Code; in that they failed to issue shipping documents containing the information required by Item 255-C of Minimum Rate Tariff No. 2, in violation of Section 3737 of the Public Utilities Code; and in that they failed to keep adequate records as required by the appropriate Uniform System of Accounts for Motor Carriers as prescribed by this Commission, in violation of Sections 3703 and 3704 of the Public Utilities Code.

O R D E R

A public hearing having been held in the above-entitled matter, the Commission being fully advised in the premises, and having made the findings and conclusions set forth above,

IT IS ORDERED:

(1) That Radial Highway Common Carrier Permit No. 19-49173, issued to John M. Van Surksum and Dolores R. Van Surksum, copartners, be, and the same hereby is, suspended for a period of 10 days beginning at 12:01 a.m. on the Monday following the effective date of this order, provided further that the suspension shall continue in effect

beyond said period of 10 days unless and until, upon further order of this Commission, the suspension be set aside and respondents' permit restored upon a satisfactory showing made to this Commission in writing that respondents have: (a) collected, or have taken appropriate action or measures to collect, all undercharges as hereinabove set forth; (b) commenced an audit of their transportation operations during the life of their permit and, within 30 days after the completion of said audit, but not later than 90 days after the effective date of this order, have collected or have taken appropriate steps to collect, all undercharges arising out of their transportation operations during the life of their permit.

(2) That respondents shall henceforth issue shipping documents in strict conformance with Item 255 Series of Minimum Rate Tariff No. 2.

(3) That respondents shall henceforth comply with the provisions of Item 250 Series of Minimum Rate Tariff No. 2.

(4) That within 60 days after the effective date of this order respondents shall have prepared and thereafter keep in proper form a set of accounts in conformance with the appropriate Uniform System of Accounts for Motor Carriers as prescribed by this Commission.

(5) That upon respondents' failure to have their Permit No. 19-49173 restored in the manner set forth in paragraph (1) hereof within 90 days after the effective date of this order, said permit is hereby revoked and cancelled effective 90 days after the effective date of this order.

The Secretary is ordered to cause service of this order to be made upon respondents, or either of them.

The effective date of this order shall be twenty days after service on respondents, or either of them.

Dated at San Francisco, California, this 21st day of May, 1957.

E. K. Schulz
President
Charles L. Terenin
William J. Adams
R. Hardy
E. L. Toy
Commissioners