

Decision No. 55337**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations, )  
 rates, charges and practices of ) Case No. 5874  
 COLLIER TRANSPORTATION COMPANY, )  
 a corporation. )

Scott Elder, on behalf of respondent;  
R. B. Costello, on behalf of Masonite  
 Corporation, interested party;  
Mary Moran Pajalich and Bert Day, on behalf  
 of the Commission staff.

O P I N I O N

On January 8, 1957, the Commission issued its order instituting an investigation into the operations, rates and practices of Collier Transportation Company, a corporation. The order of investigation was issued for the following purposes:

- (1) To determine whether respondent is violating or has violated any of the provisions of said General Order No. 99, and particularly Sections 8.11, 8.15 and 8.52 thereof;
- (2) To determine whether respondent has violated any of the provisions of Sections 494 and 532 of the Public Utilities Code;
- (3) To determine whether respondent has violated any of the provisions of Section 3664 of the Public Utilities Code or any of the rules necessary to the application and enforcement of the rates established and approved by Minimum Rate Tariff No. 2, in violation of Section 3665 of the Public Utilities Code;
- (4) To determine whether respondent is violating any of the provisions of Section 3668 of the Public Utilities Code;
- (5) To determine whether respondent is violating or has violated any of the provisions of Section 5003 of the Public Utilities Code;

- (6) To determine whether respondent has violated any of the provisions of Section 818 of the Public Utilities Code;
- (7) To determine whether respondent has violated any of the provisions of Section 851 of the Public Utilities Code;
- (8) To determine whether respondent should be ordered to cease and desist from any or all unlawful operations or practices;
- (9) To determine whether any or all of the operating authority of respondent should be canceled, revoked or suspended;
- (10) To issue any other order that may be lawful in the premises.

Public hearings were held on March 13 and 14, 1957, and on April 15, 16, 22, 23 and 24, 1957, at San Francisco before Commissioner Ray E. Untereiner and Examiner William L. Cole. Commissioner Matthew J. Dooley participated in the hearing of April 22, 1957. The matter was submitted subject to the filing of memoranda by the parties. The memoranda have been filed and the matter is now ready for decision.

Respondent is the holder of a radial highway common carrier permit and a highway contract carrier permit issued by the Commission. The Commission has authorized respondent to acquire a certificate of public convenience and necessity to operate as a highway common carrier.<sup>1</sup> The Commission also authorized respondent to acquire a certificate of public convenience and necessity as a petroleum irregular route carrier.<sup>2</sup> Respondent is now and at all times herein mentioned was operating under either said permits or said certificates.

1. Decision No. 50776 dated November 16, 1954, in Application No. 35878.
2. Decision No. 51570 dated June 9, 1955, in Application No. 36908.

As indicated earlier, the purpose of the investigation was to ascertain whether respondent had violated various statutes and rules of the Commission. Each different type of violation will be discussed separately.

Violations of Minimum Rate Tariff No. 2

During the course of the hearings, counsel for respondent and counsel for the Commission staff entered into a stipulation concerning various shipments transported by respondent between points, one of which is not within the area set forth in respondent's highway common carrier certificate, and the charges for transporting such shipments.

It was stipulated that respondent transported shipments on April 10 and 11, 1956, and January 14 and 16, 1956, respectively, under the authority of its radial highway common carrier permit. With respect to the shipments of April 10 and 11, 1956, it was stipulated that respondent assessed transportation charges based upon there being only one split delivery shipment involved. However, it was further stipulated that the required delivery instructions for a split delivery shipment set forth in the Commission's Minimum Rate Tariff No. 2 had not been complied with. For this reason the charges should have been assessed on the basis of two separate shipments. Failure to do so resulted in an undercharge of \$34.03. With respect to the shipments of January 14 and 16, 1956, it was stipulated that respondent assessed transportation charges based upon there being only one split pickup shipment involved. However, it was further stipulated that the required delivery instructions for a split pickup shipment set forth in Minimum Rate Tariff No. 2 had not been complied with. For this reason the charges should have been assessed on the basis of three separate shipments. Failure to do so resulted in an undercharge of \$84.65.

In view of these facts, the Commission hereby finds and concludes that respondent violated Section 3664 of the Public Utilities Code in that it charged a lesser rate than the minimum rate prescribed by the Commission with respect to the two shipments in question resulting in a total undercharge of \$118.68.

Violations of Respondent's Highway Common Carrier Tariff

Counsel also entered into a stipulation with respect to various shipments carried by respondent between points both of which are within the area encompassed by respondent's highway common carrier certificate.

Included in the stipulation were the amounts that would result if the transportation charges for the various shipments had been calculated under respondent's highway common carrier tariff on file with the Commission rather than under Minimum Rate Tariff No. 2. The stipulation also included the amounts actually collected by respondent for transporting the various shipments in question. Based upon this stipulation together with other evidence introduced at the hearings, the Commission hereby finds the facts shown in the following table with respect to the shipments in question:

Identifi- cation Letter	(1) Date Shown on Bill of Lading	Charge Assessed	Amount Collected	Charge Based Upon Respond- ent's Tariff
A	2/ 1/56	\$170.75	\$147.33 <sup>(2)</sup>	\$170.75
B	2/10/56	121.94	121.94 <sup>(2)</sup>	252.58
C	2/11/56	170.17	169.28	170.17
D	2/14/56	182.37	182.37	292.95
E	3/ 6/56	178.90	178.90 <sup>(2)</sup>	382.01
F	3/ 7/56	205.10	166.52	287.33
G	3/12/56	108.90	108.90	240.27
J <sup>(3)</sup>	4/17/56	186.71	186.71	345.65
L	5/21/56	198.02	198.02	344.33
O	5/ 1/56	143.53	143.53	169.70

- (1) For convenience the shipments have been given an identification letter corresponding to their identification in the exhibits.
- (2) With respect to these shipments, the stipulation did not indicate how much, if any, of the amounts collected represented transportation tax rather than freight charges. In view of that fact the entire amount shown will be assumed to have been freight charges.
- (3) Each shipment shown here involved either a split pickup or split delivery which for various reasons could not be rated as such under respondent's tariff. The charge computed under the tariff as shown on the table in each case was computed for two separate shipments and added together.

The Commission also finds and concludes from the evidence that the shipments enumerated above were shipments of lumber or forest products.

Counsel for the respondent entered into the stipulation without prejudice to its contention that the shipments involved were not transported by respondent as a highway common carrier. Respondent's contention is that all of the lumber shipments transported by it were transported under authority of its radial highway common carrier permit and not as a highway common carrier. For this reason, respondent contends that it was not obliged to charge its tariff rates; rather it could and, with respect to the shipments identified by the letters A, B, C, D, E, F, G, J, L and O, did assess the charges required by Minimum Rate Tariff No. 2. Counsel for the Commission staff contends that the shipments in question were between points located within the area encompassed by respondent's certificate and therefore, were transported by it as a highway common carrier. For this reason, counsel for the Commission staff contends that respondent should have assessed charges based upon its highway common carrier tariff rather than Minimum Rate Tariff No. 2. Counsel for the

Commission staff did not contend, however, that the charges assessed and collected by respondent for the shipments in question were lower than those set forth in Minimum Rate Tariff No. 2, rather, it was contended that Minimum Rate Tariff No. 2 had no application to these shipments.

As indicated previously, the evidence shows that on November 16, 1954, the Commission authorized respondent to acquire a certificate of public convenience and necessity to operate as a highway common carrier of lumber and forest products. This certificate authorized operations over numerous highways located in the central and western parts of California from the Oregon border to Salinas. The certificate also authorized operations to points located within a certain number of miles on either side of the named highways. The evidence further shows that on February 16, 1955, the Commission received a communication from respondent wherein respondent gave A. H. Glickman a power of attorney to act as its tariff agent and that a tariff was filed with this Commission by respondent covering its operations as a highway common carrier. The evidence shows that this tariff became effective on March 21, 1955, and has not been canceled. The evidence also shows that subsequent to respondent's obtaining authority to acquire its highway common carrier certificate but prior to respondent obtaining its petroleum irregular route certificate, respondent's president in two different sworn statements, stated that respondent was operating as a certificated carrier. The evidence also shows that respondent registered its highway common carrier certificate with the Interstate Commerce Commission. On the other hand, respondent's president testified that he has never believed and still does not believe that respondent is operating as a highway common

carrier. He also testified that respondent has never assessed charges based upon its highway common carrier tariff.

The evidence introduced at the hearing will not support a finding of fact that respondent's lumber hauling between points located within the area covered by its highway common carrier certificate were conducted between fixed termini or over a regular route.

Therefore, the question that must be answered is whether a carrier which has obtained a certificate of public convenience and necessity from the Commission authorizing it to operate as a highway common carrier within a certain area with respect to lumber and forest products, which has named a tariff agent and has published a tariff as a highway common carrier, and which does in fact operate between points located within the area embraced by the certificate, does operate between those points as a highway common carrier regardless of the frequency or regularity of the operation. Counsel have not referred us to any California Supreme Court decisions which have passed upon this point nor have we found any. However, until instructed to the contrary by the Supreme Court or by the Legislature, it is the Commission's position that such a carrier would be operating as a highway common carrier. By voluntarily acquiring the certificate of public convenience and necessity, publishing a tariff thereunder and in fact operating between points in the area, respondent has completed all of the acts necessary to dedicate its property to the public as a public utility within the limits of the certificate. As such, respondent has voluntarily subjected itself to regulation by the Commission under the Public Utilities Act, within the limits of the certificate. It follows, therefore, that respondent could not be operating as a radial highway common carrier in so far as operations within the limits of the certificate are concerned since by definition

a radial highway common carrier is a highway carrier operating as a common carrier not subject to regulation as such by the Commission under the Public Utilities Act.<sup>3</sup>

In view of our conclusion that respondent was operating as a highway common carrier when it operated between points embraced within its certificate, it follows, and the Commission hereby finds and concludes, that with respect to the shipments enumerated above, respondent violated Sections 494 and 532 of the Public Utilities Code in that it charged and collected a different compensation for the transportation of property than the applicable rates and charges specified in its schedules filed and in effect at the time. These violations resulted in a total undercharge of \$1,052.24.

#### Safety Violations

Counsel for the respondent and counsel for the Commission staff entered into a further stipulation with respect to Sections 8.11 and 8.15 of the Commission's General Order No. 99. Section 8.11 sets forth the maximum hours that a driver for a certificated carrier may work during any given period of time. Section 8.15 requires that a report be filed with the Commission whenever a driver exceeds this maximum number of hours.

The stipulation provided that respondent permitted the following named drivers of its vehicles to operate the vehicles under respondent's petroleum irregular route certificate a number of hours in excess of those permitted by Section 8.11 without making the monthly reports thereof required by Section 8.15 on the following occasions:

- February 13 and 14, 1956 - Driver, Roy Salomonson
- May 3 and 4, 1956 - Driver, J. Keiser
- June 14 and 15, 1956 - Driver, Marion Carroll
- June 17, 1956 - Driver, Grover Door
- November 8, 1956 - Driver, R. Stillwell.

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3. Sec. 3516, Public Utilities Code.



The stipulation also provided that respondent permitted the following drivers to operate its vehicles between points embraced within its highway common carrier certificate a number of hours in excess of those permitted by Section 8.11 without making the monthly reports thereof required by Section 8.15 on the following occasions:

February 1, 1956	Driver, Marion Carroll
March 6, 1956	Driver, William F. Charters
March 7, 1956	Driver, Gene Vaughan
March 8, 1956	Driver, Gene Vaughan
March 29, 1956	Driver, Sid Dole
April 10 and 11, 1956	Driver, Cecil Beall
April 18 and 19, 1956	Driver, C. H. Chenoweth
May 27, 1956	Driver, R. Stevens

This stipulation was entered into without prejudice to the respondent's contention that it was not operating as a highway common carrier with reference to the movements on February 1, 1956, March 6, 1956, March 7, 1956, March 8, 1956 and March 29, 1956.

In view of this stipulation and in view of the Commission's conclusion that respondent was acting as a highway common carrier with respect to shipments between points embraced within its highway common carrier certificate, the Commission finds and concludes that respondent violated Sections 8.11 and 8.15 of General Order No. 99 in each of the instances enumerated above.

Section 8.51 of General Order No. 99 provides that every certificated carrier shall require that a driver's log be kept by every driver in its employ. Section 8.54 of the same General Order requires that a certain prescribed form be used in keeping such logs. There is no evidence in the record concerning specific instances when Section 8.51 was violated. However, respondent's president testified that at the time of the hearings only drivers operating under its petroleum irregular route carrier certificate were keeping such logs. Respondent is hereby admonished, particularly in view of the Commission's conclusion with respect to its Highway Common Carrier

status, that under the terms of the Section, "every driver in its employ who operates a vehicle engaged in the transportation of property" must keep such logs.

#### Leases

A great amount of evidence was presented during the hearings concerning the validity of three leases entered into between respondent and three lumber companies whereby respondent purported to rent carrier equipment to the lumber companies. The question was raised that these leases were invalid and that in fact respondent was performing a carrier service with respect to these companies. The evidence indicated that two of the leases in question had been terminated prior to the time of the hearings. The third lease had not been terminated as of that time.

During the course of this investigation, the Commission has found that a great deal of confusion and uncertainty exists with respect to the practice of equipment leasing by carriers to third parties. In view of this the Commission is considering the advisability of issuing an order of investigation into the entire question of equipment leasing by carriers. For this reason and inasmuch as two of the leases in this matter have already been terminated, the Commission will not pass upon the validity of the three leases. Therefore, the penalty assessed in this matter results because of violations found by the Commission which are set forth elsewhere in this decision.

Notwithstanding the fact that the Commission is not passing upon the validity of the leases in question, it does appear that Section 851 of the Public Utilities Code was violated with respect

to these leases. Section 851 provides that no public utility shall lease any of its property necessary and useful in the performance of its duties to the public without first having secured an order from the Commission authorizing it to do so. While the Section goes on to provide that the leasing of property by a public utility shall be conclusively presumed to be of property which is not useful or necessary in the performance of its duties to the public as to any lessee dealing with such property in good faith for value, it does not provide that such conclusive presumption shall apply as to the public utility.

Based upon the evidence in the record, the Commission finds that the equipment leased by respondent is necessary and useful in the performance of its duties to the public. Therefore, in view of its conclusion that respondent is a highway common carrier, the Commission finds and concludes that respondent violated Section 851 of the Public Utilities Code by leasing property necessary or useful in the performance of its duties to the public without obtaining the Commission's prior approval.

#### Violation of Section 818

Section 818 of the Public Utilities Code provides that no public utility may issue bonds, notes or other evidences of indebtedness payable at periods of more than 12 months after the date thereof unless it first obtains Commission approval therefor. The evidence introduced at the hearings does not disclose any violation of this Section.

#### Motions

During the course of the hearings numerous motions were made to strike various items of evidence from the record which motions were taken under submission. These motions are all denied.

Conclusions

All of the facts and circumstances of record have been considered, the Commission has found and concluded that respondent has violated Sections 494, 532, 851 and 3664 of the Public Utilities Code and Sections 8.11 and 8.15 of the Commission's General Order No. 99. All of respondent's operative rights will be suspended for five days and it will be directed to collect the undercharges hereinabove found. Respondent will also be directed to examine its records from the period January 1, 1956 to the present time in order to determine if any additional undercharges have occurred, and if so, to collect such undercharges.

With regard to the safety violations hereinabove found, it is the Commission's conclusion that highway safety, being so vital, demands the strictest compliance with the Commission's safety rules and regulations.

O R D E R

A public hearing having been held in the above-entitled matter and the Commission being fully informed therein, now therefore,

## IT IS ORDERED:

1. That Collier Transportation Company's operating authority as a highway common carrier, petroleum irregular route carrier, radial highway common carrier, and highway contract carrier is suspended for five consecutive days starting at 12:01 a.m. on the ~~first~~<sup>second</sup> Monday following the effective date hereof.

2. That Collier Transportation Company shall post at its terminal and station facilities used for receiving property from the public for transportation, not less than five days prior to the

beginning of the suspension period, a notice to the public stating that its operative rights have been suspended by the Commission for a period of five days.

3. That all rates and charges filed with the Commission by Collier Transportation Company are hereby suspended for the five-day period beginning on the second Monday following the effective date of this decision.

4. That Collier Transportation Company shall, not less than two days prior to the beginning of the suspension period, file suspension supplements to their tariffs on file with the Commission stating that its rates and charges are under suspension so far as they apply to respondent and may not be used by it for the suspension period.

5. That Collier Transportation Company shall examine its records for the period from January 1, 1956 to the present time for the purpose of ascertaining if any additional undercharges have occurred other than those mentioned in this decision.

6. That Collier Transportation Company is hereby directed to take such action as may be necessary to collect the amounts of undercharges set forth in the preceding opinion together with any additional undercharges found after the examination required by paragraph 5 of this order and to notify the Commission in writing upon the consummation of such collections.

7. That in the event charges to be collected as provided in paragraph 6 of this order, or any part thereof, remain uncollected eighty days after the effective date of this order, Collier Transportation Company shall submit to the Commission, on Monday of each week, a report of the undercharges remaining to be collected and specifying the action taken to collect such charges and the result of such action, until such charges have been collected in full or until further order of the Commission.

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8. The Secretary of the Commission is directed to cause personal service of this order to be made on Collier Transportation Company and this order shall become effective twenty days after the date of such service.

Dated at Los Angeles, California, this 30<sup>th</sup> day of July, 1957.

[Signature]  
 President

[Signature]

[Signature]

[Signature]

[Signature]  
 Commissioners