

Decision No. 55370

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own)
motion into the operations, rates, and)
practices of JAMES Q. BUFFINGTON, doing)
business as BUFFINGTON FARMS TRUCKING.)

Case No. 5921

James Q. Buffington, for himself.
William C. Bricca, for the Commission staff.

O P I N I O N

On April 2, 1957, the Commission issued an order instituting investigation into the operations, rates and practices of James Q. Buffington, doing business as Buffington Farms Trucking, for the purpose of determining:

1. Whether respondent has acted in violation of Section 3667 of the Public Utilities Code by charging, demanding, collecting, or receiving a lesser compensation for the transportation of property than the applicable rates prescribed in Minimum Rate Tariff No. 2.

2. Whether respondent has acted in violation of Section 3704 of the Public Utilities Code by failing to maintain and keep the forms of accounts, records and memoranda prescribed to be kept by highway permit carriers for any of its business.

3. Whether respondent has acted in violation of the Public Utilities Code by failing to adhere to other provisions and requirements of Minimum Rate Tariff No. 2 including, but not limited to, the following Items of said Tariff: 690-H, 257, 255-C.

4. Whether any or all of the operating authority of respondent should be canceled, revoked or suspended.

5. Whether respondent should be ordered to collect from shippers and other persons liable for freight charges, the difference between charges billed or collected and minimum charges due under Minimum Rate Tariff No. 2.

6. Whether respondent should be ordered to cease and desist from any and all unlawful operations or practices.

7. Whether any other order or orders that may be appropriate should be issued in the lawful exercise of the Commission's jurisdiction.

The scope of the above investigation includes, but is not limited to, the following transportation:

<u>Freight Bill No.</u>	<u>Date</u>	<u>Consignor</u>	<u>Consignee</u>
3656	4/18/56	Anderquist Lumber Co.	North Star Lumber Co.
4501	6/16/56	Newquist Lumber Sales	Same
3624	6/18/56	Newquist Lumber Sales	Same
3585	8/24/56	James W. Newquist & Co.	L. A. Ladder Co.
4232	10/ 1/56	Anderquist Lumber Co.	Tarter, Webster & Johnson, Inc.
3947	9/ 8/56	James W. Newquist & Co.	E. K. Wood Lumber Co.
4039	9/11/56	Same	Rialto Lumber Co.
3869	9/14/56	Same	Sunland Lumber Co.
4517	9/23/56	Same	Alley Bros. Lumber Co.
3617	3/28/56	Monschke Stud Mill	Commercial Lumber Co.
3654	4/ 1/56	Monschke Stud Mill & Crosaini Mill	Owens Park
3454	4/ 2/56	J.W. Newquist (Monschke Stud Mill)	Owens Park Lumber Co.
3455	4/ 9/56	Monschke Stud Mill	Burbank Lumber Co.
3913	4/9/56	James W. Newquist & Co.	Burbank Lumber Co.
3575	5/ 4/56	Monschke Stud Mill	Burbank Lumber Co.
3456	4/18/56	J. W. Newquist	K & M Lumber Co.
3814	4/18/56	James W. Newquist & Co.	Burbank Lumber Co.
3711	4/23/56	Monschke Stud Mill	Burbank Lumber Co.
3712	5/21/56	Monschke Stud Mill	Mullins Lumber Co.
3914	4/20/56	James W. Newquist & Co.	K & M Lumber Co.
3834	7/ 3/56	Monschke Stud Mill	Mullins Lumber Co.
3826	7/10/56	James W. Newquist	Mullins Lumber Co.
3442	4/19/56	James W. Newquist	K & M Lumber Co.
4008	5/23/56	McNord Lumber Co.	North Lake Lumber Co.
4208	6/27/56	E. W. Borcharding	Orban Lumber Co.
4014	6/27/56	E. W. Borcharding Lumber Co.	Orban Lumber Co.
3663	6/25/56	Orpac Lumber Sales	San Gabriel Val. Lumber Co.

A public hearing was held before Examiner Rowe on June 27, 1957, at Chowchilla, at which time evidence was adduced and the matter was submitted for decision.

During this hearing the staff presented two witnesses from its Field Section and one from its Rate Section. The results of their investigations were introduced into the record.

The period covered by the investigation started March 26, 1956, and ended October 1, 1956. Respondent's operating authority consists of a Radial Highway Common Carrier Permit numbered 20-771, issued October 23, 1950. This authority has been exercised by respondent by the transportation of lumber between various points in the State. Evidence against respondent included freight bills and other documents referring to 27 shipments of lumber.

These freight bills fail to show the rates and charges made for these shipments. The charges were determined by reference to dispatch sheets of the carrier and other documents. Charges were imposed computed by the number of dollars per 1,000 board feet instead of per 100 pounds as provided in the Commission's Minimum Rate Tariff No. 2. Also, the record clearly shows that respondent has not been keeping records as required by the Commission.

It appears from the evidence of record and the Commission finds that in 1954 an assistant transportation representative of the Commission warned respondent and informed him that he was failing to comply with Items 255 and 257 of the Commission's Minimum Rate Tariff No. 2; that notwithstanding such warning respondent has continued such conduct and has violated said Item 257 of said Minimum Rate Tariff; that respondent has violated Section 3704 of the Public Utilities Code and has commingled his farming accounts with the accounts of his transportation business; and that as to each of the shipments hereinabove

listed represented by the above enumerated freight bills, respondent has been guilty of violating Section 3667 of the Public Utilities Code by charging, demanding, collecting and receiving a lesser compensation for the transportation of property than the applicable rates prescribed in said Minimum Rate Tariff No. 2.

The respective undercharges of which respondent is found to be guilty are as follows:

As to Freight Bill

No. 3656	\$ 65.47
No. 4501	81.73
No. 3624	94.22
No. 3585	65.16
No. 4232	16.81
No. 3947	38.11
No. 4039	62.04
No. 3869	45.73
No. 4517	53.08
No. 3617	24.43
No. 3654	9.00
No. 3454	5.94
No. 3455	4.87
No. 3913	22.11
No. 3575	30.54
No. 3456	11.83
No. 3814	24.81
No. 3711	17.17
No. 3712	11.92
No. 3914	12.09
No. 3834	6.44
No. 3826	4.78
No. 3442	14.72
No. 4008	13.84
No. 4208	10.61
No. 4014	1.60
No. 3663	<u>11.25</u>
Total Undercharges found	\$760.30

Respondent will be directed to cease and desist from the collection of charges not authorized by the Commission's Minimum Rate Tariff No. 2. Respondent additionally will be directed to cease and desist from maintaining and keeping his accounts, records and memoranda covering his radial highway carrier operations in a manner other

than as prescribed by this Commission. Respondent's operating authority will be suspended for five days and he will be directed to collect the undercharges above referred to.

O R D E R

The Commission having instituted investigation herein, public hearing having been held and the Commission being fully informed in the premises and based upon the findings and conclusions in the above opinion,

IT IS ORDERED:

(1) That James Q. Buffington who does business as Buffington Farms Trucking, cease and desist from collecting from his shippers rates or charges less than the applicable rates and charges specified in the Commission's Minimum Rate Tariff No. 2.

(2) That the operating authority of said James Q. Buffington represented by Radial Highway Common Carrier Permit No. 20-771, dated October 23, 1950, is suspended for a period of five days beginning at 12:01 a.m. on the second Monday following the effective date of this decision.

(3) That James Q. Buffington shall post at his terminal and station facilities 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 that his radial highway common carrier permit has been suspended by the Commission for a period of five days.

(4) That James Q. Buffington cease and desist from failing to maintain and keep the forms of accounts, records and memoranda prescribed to be kept by highway permit carriers for all of their business.

(5) That James Q. Buffington is hereby directed to take such action as may be necessary to collect the amounts of undercharges set forth in the preceding opinion and to notify the Commission in writing upon the consummation of such collections.

(6) That in the event charges to be collected as provided in paragraph (5) of this order, or any part thereof, remain uncollected eighty days after the effective date of this decision, James Q. Buffington 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 this Commission.

(7) The Secretary of the Commission is directed to cause personal service of this decision and order to be made on James Q. Buffington and this decision and order shall become effective twenty days after the date of such service.

Dated at San Francisco, California, this 5th day of August, 1957.

[Signature]
President
[Signature]
[Signature]
[Signature]

Commissioners

Commissioner Ray E. Untereiner, being necessarily absent, did not participate in the disposition of this proceeding.