

ORIGINAL

Decision No. 56039

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations, rates,)
 and practices of WM. H. NUNNEMAKER and) Case No. 5925
 CLYDE H. NUNNEMAKER, doing business as)
 NUNNEMAKER TRANSPORTATION.)

C. H. Nunnemaker, on behalf of himself and
 William H. Nunnemaker, respondents.
S. A. Moore, for Permanente Cement Company;
Eugene A. Feise, for Calaveras Cement
 Company; interested parties.
Martin J. Porter and Arthur Lyon, for the
 Commission staff.

O P I N I O N

On April 9, 1957, the Commission issued its order instituting an investigation into the operations, rates and practices of William H. Nunnemaker and Clyde H. Nunnemaker, doing business as Nunnemaker Transportation. The purpose of the investigation was to determine whether, during certain periods of time, respondents violated Section 3667 of the Public Utilities Code by charging, demanding, collecting, or receiving less than the applicable minimum rates for the transportation of property. The period of time included within the order of investigation was the period from August 1956 through September 1956. During this period of time respondent held a valid permit as a radial highway common carrier issued by the Commission.

A public hearing was held on August 21, 1957, at Eureka before Examiner William L. Cole at which time the matter was submitted.

At the time of the hearing counsel for the Commission staff and the respondents entered into a stipulation relative to certain facts concerning the shipments in question including facts concerning respondents' methods of operation. Various exhibits and testimony

were also introduced into the record. From the evidence introduced, it was shown that all of the shipments under examination took place during August and September, 1956. Likewise, it was shown that the shipments all involved bulk cement, that they all originated either at the Permanente Cement Company plant at Permanente or at the Ideal Cement Company plant at Redwood City, and that the shipments were consigned to either A & E Readymix Company at Arcata or McWhorter & Dougherty Company at Fortuna.

Question Presented

The principal question presented by this investigation is whether or not respondents violated the provisions of the Commission's Minimum Rate Tariff No. 10 (dealing with cement) by improperly consolidating more than one shipment for billing purposes and thereby gaining the advantage of the lower rate because of the higher weight resulting from the consolidation. With respect to two of the shipments in question, which involved single truckloads of cement, the problem is also presented whether or not respondents violated various provisions of Tariff No. 10 in not assessing the correct rate for reasons other than improper consolidation of shipments.

Respondents' Methods of Operation

The evidence shows and the Commission hereby finds and concludes that the following facts exist with respect to respondents' methods of operation.

Respondents receive an order for the transportation of two or more truckloads of cement from one of the two consignees noted above. This order was originally made by phone but at the present time, it is made in writing. When the order was phoned in, respondents would prepare a purchase order at that time. Respondents then dispatched their trucks to either the Permanente mill or the Ideal mill. The trucks are loaded at the respective mill on the same day or on immediate succeeding days. The weight of the combination of the two or more truckloads exceeded the weight of 60,000 pounds. However, each truckload would weigh less than 60,000 pounds.

When the trucks are loaded at the respective cement mill, there is issued a document. This document is issued for each truckload of cement.¹ It appears from the evidence that at times this document is on a bill of lading form, and at other times on a form entitled Order to Packing Department. These documents show the name of the carrier, the consignee and point of destination and the amount and description of the property to be transported. A weight certificate is then obtained for each truckload of cement.

The cement is then transported to its point of destination. At this time another document comes into play. This is a document that respondents refer to as a hand tag. This document shows the Ideal Cement Company, or presumably Permanente Cement Company, as the shipper and A & E Readymix, or presumably McWhorter & Dougherty, as consignee. The points of origin and destination are shown as is the description and quantity of property transported. The weight is also shown. The document is signed by respondents' drivers and

1. It was shown by the evidence that if a truck is loaded in the evening after working hours, no such document is issued.

by a representative of the consignee. Apparently, when two truckloads of cement are transported at the same time, only one hand tag is used for both truckloads, otherwise, a hand tag is made for each truckload.

The final document that is issued is sent by respondents to the consignees. This document will show the combined weight of two or more truckloads of cement and the charges will be assessed based upon this combined weight. This document is sent to the consignee after the last load of cement shown thereon has been delivered. The consignees then pay the freight charges shown on this document.

The cement is purchased by the consignee free on board at the cement mill. The arrangement of carriage is made by the consignee and the control of carriage, the method of transportation and the selection of the carrier is at all times the sole privilege of the consignee. The ownership of the cement is vested in the consignee immediately after the trucks are loaded.

Positions of the Parties

The position of the Commission staff appears to be that the definition of "shipment" in the tariff² is such that a shipping document is required to be issued by the carrier at the time he

2. Subparagraph (k) of Item 10-B defines "shipment" as follows:

"(k) SHIPMENT means a quantity of property tendered for transportation to one carrier at one time on one shipping document by: (See Note)

(1) one shipper at one point of origin for one consignee at one point of destination; or

(2) one shipper at one point of origin for one consignee at more than one point of destination, or for more than one consignee at one or more points of destination (split delivery).

Note:-The entire shipment need not be transported on one vehicle at one time."

receives the quantity of property to be transported and that it is the document issued at this time that controls as to the size of the shipment. For this reason, the staff contends that the document issued at the time the cement is picked up is the document referred to in the definition and therefore, is the one that controls the size of the shipments in question. Therefore, inasmuch as this document is issued for each truckload of cement, each such load constitutes a separate shipment and should be rated as such.

The position of respondents, in effect, is that the tariff does not specifically state when the shipping document is to be issued and that the document issued at the time the cement is picked up is nothing more than a receipt for the cement. They contend, in effect, that the final document issued which is sent by the respondents to the consignees is the applicable shipping document for ascertaining the size of the shipment. Inasmuch as this document sets forth two or more truckloads, they contend that an individual shipment consists of two or more truckloads.

Size of Shipments

It is the Commission's conclusion that the position of the staff is correct and that subparagraph (k) of Item 10-B of the tariff requires that the carrier issue a shipping document at the time of or prior to the tender of the property for shipment, which document controls as to the size of the shipment. The Commission wishes to point out that it has long been the accepted practice for carriers to issue shipping documents prior to or at the time of the tender of the property for transportation. It is the Commission's conclusion that the documents that were issued by the respondents to either Permanente Cement Company or Ideal Cement Company are the

applicable shipping documents for ascertaining the size of the shipments in question. Inasmuch as these documents were issued for each truckload of cement, it is the Commission's conclusion that each truckload constituted an individual shipment.

Further relevant facts concerning these shipments which the Commission hereby finds, together with its conclusions as to the correct minimum charges for such shipments are set forth in the following table:

<u>Document No.</u>	<u>Date</u>	<u>Point of Origin</u>	<u>Point of Destination</u>	<u>Weight</u>	<u>Charges* Assessed by Respondents</u>	<u>Correct Minimum Charges</u>
T60285	8/14/56	Redwood City	Arcata	43,920		\$193.25
T60259	8/14/56	Same	Same	43,060		189.46
T60390	8/15/56	Same	Same	49,760	\$482.00	218.94
T60414	8/16/56	Same	Same	42,720		187.97
-	8/17/56	Same	Same	42,840	301.60	188.50
T60514	8/20/56	Same	Same	42,860		188.58
-	8/20/56	Same	Same	45,240		199.06
-	8/21/56	Same	Same	43,220	462.90	190.17
F.o. 2785	8/22/56	Permanente	Fortuna	43,540		180.69
F.o. 2920)	8/23/56	Same	Same	43,280	306.04	179.61
F.o. 2921)						
F.o. 2914	8/24/56	Same	Same	43,400		180.11
F.o. 3148	8/27/56	Same	Same	42,360		184.27
F.o. 3414	8/30/56	Same	Same	30,080	436.54	174.00
T60832	8/24/56	Redwood City	Arcata	44,200		194.48
-	8/24/56	Same	Same	44,320	312.03	195.01
F.o. 3483	8/31/56	Mountain View	Fortuna	42,840		186.35
F.o. 3640	9/ 4/56	Same	Same	43,060	302.80	187.31
T61248	9/ 4/56	Redwood City	Arcata	43,260		200.08
T61255	9/ 4/56	Same	Same	44,140		204.15
T61280	9/ 4/56	Same	Same	42,780	458.88	197.86
T61363	9/ 5/56	Same	Same	42,540		196.75
T61356	9/ 5/56	Same	Same	42,800		197.95
T61403	9/ 7/56	Same	Same	45,180	463.61	208.96
F.o. 4067	9/10/56	Mountain View	Fortuna	43,240		188.79
F.o. 4193	9/11/56	Same	Same	43,400	305.41	188.09
F.o. 4355	9/12/56	Same	Same	44,460		193.40
F.o. 4529)						
F.o. 4530)	9/15/56	Same	Same	43,820	311.18	190.62
F.o. 4670	9/17/56	Same	Same	43,060		187.31
F.o. 4801	9/18/56	Same	Same	42,820	302.73	186.27
F.o. 4940	9/20/56	Same	Same	43,000		187.05
F.o. 543						
F.o. 544	9/28/56	Same	Same	43,500		189.23
F.o. 5168	9/21/56	Same	Same	44,400	461.42	193.14

*Each charge shown in this column represents the charge assessed by respondents for that particular shipment and those immediately preceding it for which no charges are shown.

In view of the foregoing facts and conclusions, the Commission hereby finds and concludes that respondents violated Section 3667 of the Public Utilities Code by charging a lesser compensation for the transportation of property than the applicable minimum charges prescribed by the Commission resulting in undercharges amounting to \$1,220.27.

Document Violations

Examination of the various documents issued by the respondents indicates that no single document contained all of the information required by Item 180 of the tariff.³ Respondents will be ordered to fully comply with the provisions of Item 180 in the future.

Other Violations

With respect to two shipments made by respondents, the evidence shows that an improper rate was used in calculating the transportation charges. With respect to these two shipments, the Commission finds and concludes that the following facts exist:

<u>Document No.</u>	<u>Weight of Cement in Pounds</u>	<u>Point of Origin</u>	<u>Point of Destination</u>	<u>Charges Assessed by Respondent</u>	<u>Correct Minimum Charges</u>
6610	47,500	Mountain View	Maple Hills	\$163.87	\$181.69
6614	43,760	Mountain View	Garberville	150.97	167.38

The shipments each consisted of one truck and trailerload of cement. At the time of the hearing, respondents acknowledged that their charges were incorrect and that they were due to errors in calculating the proper distance between the respective points of origin and destination. The total amount of the undercharges is \$34.23.

3. Item 180 requires certain information to appear on the shipping documents issued by the carrier.

Conclusions

The Commission hereby finds and concludes that the respondents violated Item 180 of Minimum Rate Tariff No. 10 and Section 3667 of the Public Utilities Code in that they charged a lesser compensation for the transportation of property than the applicable minimum charges prescribed by the Commission. Respondents will be ordered to cease and desist from such violations in the future and will be further ordered to collect the undercharges hereinabove found. In view of all of the circumstances surrounding these violations, respondents' operating rights will not be suspended.

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 William H. Nunnemaker and Clyde H. Nunnemaker, doing business as Nunnemaker Transportation, are hereby directed to cease and desist from issuing shipping documents which do not contain all of the information required by Item 180 of the Commission's Minimum Rate Tariff No. 10.

(2) That the respondents are hereby directed to cease and desist from charging and collecting a lesser compensation for the transportation of property than the applicable minimum charges prescribed by the Commission.

(3) That the respondents are hereby directed to collect the undercharges hereinabove found.

(4) That in the event charges to be collected as provided in paragraph 3 of this order, or any part thereof, remain uncollected eighty days after the effective date of this order, respondents 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.

(5) The Secretary of the Commission is directed to cause personal service of this order to be made upon each respondent and this order shall be effective twenty days after the completion of such service upon both respondents.

Dated at San Francisco, California, this 7th day of January, 1958.

[Signature]
President

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Commissioners