

ORIGINALDecision No. 56047

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates, and practices of HOYT HENDRIX,
doing business as HOYT HENDRIX
TRUCKING.)

Case No. 5873

Arthur G. Potter, Jr., and Hoyt Hendrix, for
respondent.
J. J. O'Neill, for A & E Redimix; S. A. Moore,
for Permanente Cement Company; R. J. Blich
and Clyde H. Nunnemaker, for Nunnemaker
Transportation Co.; George Vochatzer, for
George's Trucking; Tom McWhorter, for
McWhorter & Dougherty, Inc.; Joe F. Costa,
for Joe F. Costa Trucking; T. Elmer Hight,
for himself; interested parties.
William C. Bricca, for 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 Hoyt Hendrix, doing business as Hoyt Hendrix Trucking. The purpose of the investigation was to determine whether respondent violated the Public Utilities Code by charging, demanding, collecting or receiving a lesser compensation for the transportation of bulk cement than the applicable minimum charges prescribed in the Commission's Minimum Rate Tariff No. 10 and by failing to adhere to other provisions and requirements of that tariff.

The Commission takes official notice of the fact that during the period of time involved in this investigation, respondent held valid permits issued by the Commission as a radial highway common carrier and as a highway contract carrier.

A public hearing was held on February 7, 1957, at Oakland before Examiner William L. Cole. Briefs were filed and the matter was argued orally before Commissioner C. Lyn Fox and Examiner Cole

at San Francisco on February 20, 1957, at which time the matter was submitted subject to the filing of additional briefs. Such briefs have been filed and the matter is now ready for decision.

At the time of the hearing, a member of the Commission's Field Section and a rate expert from the Commission's Rate Section testified on behalf of the Commission staff. Various witnesses testified on behalf of the respondent. Various exhibits were introduced into evidence. The evidence introduced related to shipments hauled by respondent during the month of July, 1956.

Question Presented

Examination of the evidence presented in this matter indicates that the question to be answered is whether or not respondent violated Minimum Rate Tariff No. 10 by improperly consolidating shipments of bulk cement for billing purposes.

Respondent's Method of Operation

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

The shipments involved were received by respondent at the Ideal Cement Company, hereinafter referred to as Ideal, located at Redwood City, and were transported to the Eureka Ready Mix Company, hereinafter referred to as Readymix, located in Eureka. /

Readymix maintains a cement silo in Eureka which has a capacity of 120,000 pounds. Readymix has a standing instruction

with respondent that the latter is to transport sufficient cement to keep that silo full. Readymix has also instructed Ideal to load any of respondent's trucks at any time that it appears at Ideal's cement mill. Readymix buys the cement from Ideal free on board at Redwood City.

During the period of the year from the first of April to the first of December, Readymix consumes on the average of between a truckload and a truckload and a half of cement per day. Respondent examines the silo and after consultation with Readymix decides how much cement must be transported to fill the silo to working capacity. Respondent dispatches trucks daily in order to supply the silo.

When one of respondent's trucks arrives at the Ideal mill to load cement, Ideal prepares a document which the truck driver signs. Such a document is prepared and signed for each truckload of cement that is loaded.¹ The document is in the form of a uniform domestic straight bill of lading. It shows Ideal as the consignor and shipper and Readymix as the consignee. It also shows the point of origin, the point of destination, the date, and the fact that a truckload of cement was involved. Though the document contains spaces for weight and rate, these spaces were not filled in.

After the truck is loaded, it is weighed at the Ideal mill and a weighmaster's certificate is obtained.

Respondent issues another document for each truckload of cement it transports. This document has as its title "Shipping Order and Freight Bill". This document shows Ideal as the shipper,

1. The evidence shows, however, that when the truck arrives at the mill at night after working hours, no such document is prepared or signed.

Readymix as the consignee, the point of origin, the weight involved, and the fact that one truckload of cement is hauled. The document contains the driver's signature under the following statement: "Received by carrier in good condition except as noted." The document also contains the following statement which is followed by a signature: "Received by consignee in good condition except as noted." There is no evidence in the record as to when this document is prepared or issued or to whom it is issued. The third document issued by respondent covers two truckloads of cement. This document is issued after the two truckloads have been transported. This document is sent to Readymix. It shows from whom and to whom the cement is transported and from where and to where it is transported. The document describes the goods transported; to wit, cement, the weight involved, the applicable rate, the total freight charges and pertinent railhead information. As stated above, this document covers two truckloads of cement and the rate and freight charges shown thereon were assessed on the basis of the combined weight of the two truckloads. Because of the weights involved the rate for the combined weight of the two truckloads is less than the rate for the weight of a single truckload. Readymix pays the freight charges for the transportation based upon this last document.

With one exception in the past four years, there has always been cement available at Ideal's mill to load respondent's trucks when they arrive there.

Positions of the Parties

The position of the Commission staff is 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 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 signed by respondent's driver on the bill of lading form and given to Ideal 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 respondent and the interested parties, on the other hand, is that the tariff does not specifically state when the shipping document is to be issued and that the document signed by respondent's driver and given to Ideal is nothing more than a receipt for the cement. They contend that in the shipments in question, the third document described above, sent by respondent to Readymix is the applicable shipping document for ascertaining

² Subparagraph k of Item 10B defines the word "shipment" as:
"(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."

the size of the shipment. Inasmuch as this document sets forth two truckloads, they contend that an individual shipment consists of two 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 to the 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>Weight</u>	<u>Charge Assessed* by Respondent</u>	<u>Correct Minimum Charge</u>
T 58158	7/10/56	47,680		197.87
T 58361	7/12/56	47,380	336.99	196.63
T 58248	7/11/56	45,460		188.65
T 58402	7/13/56	44,540	319.05	184.84
T 58673	7/18/56	45,860		190.32
T 58840	7/20/56	45,000	322.10	186.75
T 58588	7/17/56	46,860		194.47
T 58773	7/19/56	46,860	332.24	194.47
Tag 03559	7/23/56	45,780		189.99
Tag 03561	7/25/56	45,200	322.52	187.58
T 57724	6/29/56	45,280		187.91
T 57783	7/ 2/56	44,880	319.62	185.92
T 57861	7/ 3/56	45,680		189.57
T 58028	7/ 6/56	47,460	330.18	196.96
T 57926	7/ 5/56	45,340		188.16
T 58089	7/ 9/56	44,840	319.69	186.09

Rewritten

Document No.	Date	Weight	Charge Assessed* by Respondent	Correct Minimum Charge
T 58909	7/24/56	47,320		196.38
T 59190	7/27/56	46,340	332.02	192.31
20405		46,160		191.56
T 59416	7/31/56	45,580	325.22	189.16
TT 59249	7/27/56	44,240		183.60
T 59351	7/30/56	43,840	312.24	181.94

* 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 \$609.27.

Shipping Document Violations

During the hearing it was pointed out that with respect to all three types of documents issued by respondent, there was no single document which contained all of the information required by Item 180 of the tariff.³ Respondent will be ordered to comply strictly with this requirement in the future.

Conclusions

The Commission hereby finds and concludes that the respondent violated Item 180 of Minimum Rate Tariff No. 10 and Section 3667 of the Public Utilities Code in that he charged a lesser compensation for the transportation of property than the applicable minimum charges prescribed by the Commission. Respondent 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, respondent's operating rights will not be suspended.

³ Item 180 requires that certain information be shown on the shipping document issued by the carrier.

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 Hoyt Hendrix is 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 respondent is 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, respondent 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 Hoyt Hendrix and

this order shall be effective twenty days after the completion of such service.

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

[Signature]
Secretary
[Signature]
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Commissioners