

Decision No. 56283**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 LOREN B. KINNEY, doing ) Case No. 5991  
 business as KINNEY TRUCKING. )

Loren B. Kinney, in propria persona.  
Franklin G. Campbell, on behalf of the  
 Commission's staff.

O P I N I O N

On October 1, 1957, the Commission issued an order of investigation on its own motion into the operations, rates and practices of Loren B. Kinney for the purpose of ascertaining whether the respondent has violated Sections 3664 and 3667 of the Public Utilities Code by charging, demanding, collecting or receiving a lesser compensation for the transportation of property than the minimum charges prescribed in the Commission's Minimum Rate Tariff No. 2.

A public hearing was held on December 3, 1957 at Redding before Examiner William L. Cole at which time the matter was submitted.

Facts

Based upon the evidence introduced at this hearing, the Commission hereby finds that the following facts exist:

1. During the period of time the shipments hereinafter referred to took place, respondent was operating pursuant to a radial highway common carrier permit issued by this Commission.

2. Prior to this period of time, respondent has been served with the Commission's Minimum Rate Tariff No. 2 and all supplements thereto and the Commission's Distance Table No. 4 and all supplements thereto.

3. During the period from June 1956 through August 1957, respondent transported 19 shipments of lumber, among others, from various points of origin to various points of destination in the State of California. The shipper for all of these shipments was the Main Lumber Company. Respondent assessed his transportation charges on the basis that the various points of destination of the shipments were located on railhead. The various points of destination of the 19 shipments in question were in fact not located on railhead at the time the respective shipments took place. The points of origin of the shipments were located on railhead at the time the respective shipments took place. Further facts regarding these 19 shipments are set forth in the following table:

<u>Freight Bill No.</u>	<u>Date</u>	<u>Point of Origin</u>	<u>Point of Destination</u>	<u>Weight</u>	<u>Charge Assessed &amp; Collected</u>
152	6/12/56	Corning	Wilmington	47,350	284.10
151	6/12/56	Corning	Wilmington	44,940	269.64
145	6/ 9/56	Central Valley	Solano Beach	49,920	299.52
144	6/ 9/56	Central Valley	Banning	52,480	335.87
143	6/ 8/56	Redding	Wilmington	47,020	282.12
153	6/12/56	Central Valley	Montebello	47,300	283.80
178	7/13/56	Central Valley	Wilmington	50,700	304.20
175	7/10/56	Central Valley	Downey	48,180	289.08
226	8/30/56	Central Valley	Paramount	52,140	312.84
214	8/16/56	Central Valley	Newark	46,680	182.05
216	8/21/56	Central Valley	Solano Beach	51,320	307.92
196	8/ 4/56	Central Valley	Solano Beach	47,380	284.28
208	8/14/56	Central Valley	Oceanside	44,400	266.40
202	8/ 9/56	Central Valley	No. Hollywood	45,900	275.40
199	8/ 4/56	Sacramento	Solano Beach	45,280	244.51
297	11/ 7/56	Central Valley	Azusa	48,520	291.12
309	12/12/56	Central Valley	Torrance	43,780	262.68
337	8/30/57	Central Valley	Escondido	50,840	305.04
316	1/ 4/57	Central Valley	Solano Beach	44,840	269.04

4. Prior to the time the shipments in question took place and with respect to previous shipments, respondent had received an informal undercharge letter from the Commission directing him to collect certain undercharges resulting from his assessing transportation charges on the basis that the points of destination were on railhead when in fact they were not.

Conclusions

Based upon the facts hereinabove found, it is the Commission's conclusion that the lowest possible minimum charges for the shipments in question are those set forth in the following table:

<u>Freight Bill Number</u>	<u>Correct Min. Charges</u>	<u>Freight Bill Number</u>	<u>Correct Min. Charges</u>
152	\$320.83	216	\$347.73
151	304.50	196	321.03
145	338.24	208	300.84
144	376.58	202	311.01
143	318.60	199	284.17
153	320.49	297	328.76
178	343.53	309	296.64
175	326.46	337	344.48
226	353.29	316	303.83
214	212.47		

Based upon the facts hereinabove found and the conclusions heretofore reached, the Commission hereby finds and concludes that respondent violated Sections 3664 and 3667 of the Public Utilities Code by assessing and collecting less than the minimum rates and charges established by the Commission for the transportation of property. These violations resulted in undercharges totalling \$703.87. Respondent's radial highway common carrier permit will be suspended for a period of five days. Respondent will be ordered to cease and desist from further violations of the Commission's Minimum

Rate Tariff No. 2 and he will also be ordered to collect the undercharges hereinabove found. Respondent will also be directed to examine his records from the period January 1, 1956 to the present time in order to determine if any additional undercharges have occurred and to file with the Commission a report setting forth the additional undercharges he has found, if any. Respondent will be directed to collect any such additional undercharges.

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 the radial highway common carrier permit issued to Loren B. Kinney is hereby suspended for five consecutive days commencing at 12:01 a.m. on the second Monday following the effective date hereof.
- (2) That Loren B. Kinney is hereby ordered to cease and desist from any further violations of the Commission's Minimum Rate Tariff No. 2.
- (3) That Loren B. Kinney shall post at his 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 his radial highway common carrier permit has been suspended by the Commission for a period of five days.

(4) That Loren B. Kinney shall examine his 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.

(5) That within sixty days after the effective date of this decision, Loren B. Kinney shall file with the Commission a report setting forth all undercharges found pursuant to the examination hereinabove required by paragraph 4.

(6) That Loren B. Kinney 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 4 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 ninety days after the effective date of this order, Loren B. Kinney 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.

(8) The Secretary of the Commission is directed to cause personal service of this order to be made upon Loren B. Kinney and this order shall be effective twenty days after such service.

Dated at San Francisco, California, this 25th day of February, 1958.

[Signature]  
President

[Signature]

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Commissioners