

ORIGINALDecision No. 56311

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation)
 into the operations, rates and)
 practices of T. ELMER HIGHT.)

Case No. 5931

T. Elmer Hight, in propria persona;
S. A. Moore, for Permanente Cement Company;
Eugene A. Feise, for Calaveras Cement Company;
Tom McWhorter, for McWhorter and Dougherty, Inc.;
C. H. Nunnemaker, for Nunnemaker Transportation,
 interested parties.
Martin J. Porter and Arthur Lyon, for the
 Commission staff.

O P I N I O N

On April 16, 1957, the Commission issued its order instituting an investigation into the operations, rates and practices of T. Elmer Hight. The purpose of the investigation was to determine whether, during certain periods of time, respondent 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 January 1956 through February 1956. The Commission takes official notice of the fact that during this period of time respondent held valid permits, as a radial highway common carrier and as a highway contract carrier, issued by the Commission.

A public hearing was held on August 20, 1957, at Loleta, before Examiner William L. Cole, at which time and place the matter was submitted.

At the time of the hearing counsel for the Commission and respondent entered into a stipulation which included, among other items, an exhibit which sets forth a summary of certain shipping data contained in the records of respondent, together with an opinion as to the applicable minimum rates for shipments reflected by such data. The exhibit was prepared by the rate branch of the Commission. This summary of shipping data shows that respondent transported various shipments of bulk cement during the period indicated above, that Permanente Cement Company was the consignor of such shipments, and that Mercer, Fraser Company was the consignee of such shipments.

This stipulation also set forth that respondent has been served and had in his possession, Minimum Rate Tariff No. 10 and all rules and regulations applicable to the transportation involved in this investigation.

Question Presented

The question presented by this investigation is whether or not respondent 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 affording the advantage of the lower rate because of the higher weight resulting from the consolidation. The answer to this question is not without

a certain amount of doubt. The question can be answered only after a careful examination of respondent's method of operation, together with an examination of the pertinent provisions of Tariff No. 10.

Respondent's Methods 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.

Respondent would receive a telephone request from the consignee for the transportation of two truckloads of bulk cement. Respondent would perform such transportation. However, the loads were not necessarily transported on the same day. Respondent would issue what he termed a "hand tag" for each truckload. With respect to the shipments in question this hand tag showed the Permanente Cement Company as the shipper and Mercer, Fraser Company as the consignee. The hand tag also showed the point of origin, point of destination, description of property transported, the gross weight of the load, and the number of the truck. The document also contained the signature of a representative of consignee showing that consignee had received the cement. The document also contained spaces for showing the rate, charges, driver's signature and shipper's signature. A copy of this document was given to the consignee and the original was retained by the respondent. While the rate and transportation

charges are shown on the original, the evidence indicates that this information was placed there after the copy had been given to the consignee.^{1/}

The weight of each truckload of cement was less than 60,000 pounds, whereas the combined weight of two truckloads exceeds 60,000 pounds. The lower rail rate for bulk cement was based upon a minimum weight of 60,000 pounds per shipment.

After both truckloads of cement were transported by respondent, he issued and sent to the consignee another document. This document was addressed to Mercer, Fraser Company, but it did not state specifically who was the consignee nor who was the shipper. It showed that bulk cement had been hauled from Permanente Cement Company to Essex. It showed the dates on which the two truckloads were shipped together with the weight of each shipment. The charges were shown for each truckload and the transportation tax for each truckload. The rate used, however, was based upon the combined weights of the two loads. The two charges and transportation taxes were then added together to arrive at a total charge. This was paid by the consignee.

As indicated previously, the shipments in question took place in January and February of 1956. The evidence shows that later on in the spring of 1956, respondent sold his cement carrying equipment and business to another party and no longer hauls bulk cement.

^{1/} Both the original and a carbon copy of two of the hand tags were admitted into evidence. While the figures for the rate and charge assessed are shown on the original, they do not appear on the carbon copy. A carbon impression of the signature of the representative of the consignee does, however, appear on the carbon copy.

Pertinent Tariff Items

There is no question but that the Tariff is arranged so that the transportation charges are to be calculated by shipments. Therefore, the pertinent Tariff item is the one setting forth the definition of the word "shipment". This definition is set out in subparagraph (k) of Item 10-B of the Tariff and reads 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."

Item 180 of the Tariff provides as follows:

"A shipping document (either in individual or manifest form) shall be issued by the carrier to the shipper for each shipment received for transportation. The shipping document shall show the following information:

- (a) Name of shipper
- (b) Name of consignee.
- (c) Point of origin.
- (d) Point of destination
- (e) Description of the shipment (in terms of the Western Classification or Exception Sheet or as provided in this tariff).
- (f) Weight of the shipment (or other factor or measurement upon which charges are based).
- (g) Rate and charge assessed.
- (h) Whether point of origin and/or point of destination is located at railhead and such other information as may be necessary to an accurate determination of the applicable minimum rate and charge.

The form of shipping document in Section No. 3 will be suitable and proper.

A copy of each shipping document shall be retained and preserved by the issuing carrier, subject to the Commission's inspection, for a period of not less than three years from the date of its issuance."

Positions of the Parties

The position of the Commission staff is that each separate truckload of cement should be considered as a separate shipment, and it appears to be the staff's position that the documents respondent calls "hand tags" are the applicable shipping documents referred to in Items 10-B and 180 of the Tariff. Therefore, the staff contends that inasmuch as each truckload constitutes a separate shipment, the higher rate set out in Tariff No. 10 should be applied rather than the lower alternate rail rate.

The position of respondent appears to be that two truckloads of cement are tendered at the same time and that the applicable shipping document is the final document sent to the consignee which lists both truckloads of cement. Therefore, the respondent contends, in effect, that each individual shipment consists of two truckloads and, consequently, his use of the lower rail rate was correct.

Size of Shipments

It is the Commission's finding and 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. The record does not disclose that respondent issued any documents at the time of or prior to the tender of the property for transportation, and we hereby so find. However, it is the Commission's finding and conclusion that the "hand tags", which were the first documents he issued, 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 finding and 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>
6602	1/7/56	44,080	\$141.94	\$192.00
6557	1/13/56	43,060	138.65	189.46
6463	1/17/56	43,100	138.78	189.64
6762	1/20/56	43,320	139.49	190.61
6615	1/25/56	43,700	140.71	192.00
6472	1/26/56	44,720	144.00	192.00
6618	1/27/56	42,880	138.07	188.67
6620	1/31/56	43,240	139.23	190.26
6477	1/31/56	43,000	138.46	189.20
6572	2/1/56	43,060	138.65	189.46
6537	2/1/56	41,600	133.95	183.04
6622	2/2/56	44,000	141.68	192.00
6539	2/3/56	42,520	136.91	187.09
6542	2/7/56	42,020	148.96	194.34
6486	2/8/56	41,020	145.42	189.72
6631	2/14/56	42,540	150.79	196.75
6494	2/16/56	43,760	155.13	202.39

In view of the foregoing facts and conclusions, the Commission hereby finds and concludes that respondent 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 \$837.81. 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.

Highway Common Carrier Certificate

At the time of the hearing, respondent testified that he had been issued a certificate of public convenience and necessity to operate as a highway common carrier. When asked what the status of this certificate was, respondent testified that he thought it was void, that when he sold a portion of his equipment and business, the operating rights went with the sale. Respondent also testified that he did not know whether he had filed a tariff or not.

The Commission takes official notice that by Decision No. 51653, dated July 5, 1955, in Application No. 36370, the Commission

issued a certificate of public convenience and necessity to respondent to operate as a highway common carrier to transport lumber and cement between various named points. The Commission also takes official notice that this certificate has not been transferred and that respondent has never filed a tariff as required by Decision No. 51653.

In view of the foregoing facts, the Commission finds and concludes that the highway common carrier operations above-described, have been abandoned without first having appropriate authority therefor. This certificate will be revoked.

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 certificate of public convenience and necessity created by Decision No. 51653, dated July 5, 1955 in Application No. 36370 is hereby revoked.
2. That T. Elmer Hight 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 respondent is 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 on T. Elmer Hight and this order shall be effective twenty days after the completion of such service.

Dated at Los Angeles, California, this 3rd day of MARCH, 1958.

[Signature]
President

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Commissioners