

ORIGINAL

Decision No. 57315

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates, and practices of DAVID F. RYERSON and JAMES S. PHILLIPS, doing business as PHILLIPS TRUCKING.

Case No. 6117

Edward G. Fraser, Jr., for the Commission staff.
James S. Phillips, for respondents.

O P I N I O N

This proceeding was instituted, upon the Commission's own motion, by the service of the order of investigation on James S. Phillips and David F. Ryerson on June 2, 1958, and June 4, 1958, respectively, to determine whether said respondents, doing business as Phillips Trucking, acting pursuant to radial highway common carrier and highway contract carrier permits issued by this Commission (1) have violated Public Utilities Code Sections 3737, 3664 and 3667 by charging, demanding, and collecting or receiving a lesser compensation for the transportation of property than the applicable charges prescribed in Minimum Rate Tariff No. 2 and Minimum Rate Tariff No. 10, (2) have violated Public Utilities Code Section 3737 by issuing shipping documents that failed to comply with the requirements of Minimum Rate Tariff No. 2 and Minimum Rate Tariff No. 10, (3) have violated Public Utilities Code Section No. 3737 by failing to adhere to other provisions and requirements of Minimum Rate Tariff No. 2 and Minimum Rate Tariff No. 10 and supplements thereto.

A public hearing was held in Colton, California, on Tuesday, July 22, 1958, before Examiner Kent C. Rogers, at which evidence, oral and documentary, was adduced and the matter was submitted for decision. Upon the evidence of record, the Commission makes the following findings of fact and conclusions of law:

That respondents, doing business as Phillips Trucking, at all times herein mentioned, were, and now are, the holders of Radial Highway Common Carrier Permit No. 36-3268 issued on January 8, 1957, and Highway Contract Carrier Permit No. 36-3488 issued on December 3, 1957; that respondents were served with copies of Minimum Rate Tariff No. 2 and existing supplements thereto on May 10, 1957, and were served with copies of Minimum Rate Tariff No. 10 and existing supplements thereto and Distance Table No. 4 on January 10, 1957, and at all times set forth hereinafter knew or should have known the contents of said tariffs and distance table; that respondents hold no other operating authority issued by this Commission; that respondents transported 30 shipments of bulk and sacked cement for the Riverside Cement Company from its plant in Crestmore, Riverside County, to the Ryerson Cement Company located 2/10 of one mile east of the easterly city limits of the City of El Centro; that in each instance the freight charges were paid by the consignor Riverside Cement Company; and that the 30 shipments are reflected by 9 manifest freight bills from the respondent to the Riverside Cement Company designated Exhibits Nos. 3 through 11 herein.

The evidence further shows that respondents undercharged for the services shown on Exhibits Nos. 3 through 11 herein amounts as follows:

<u>Date</u>	<u>Exhibit No.</u>	<u>Amount Charged and Collected by Respondents</u>	<u>Correct Total Charges *</u>	<u>Amount Undercharged</u>
6-24-57	3	\$ 723.48	\$ 771.72	\$ 48.24
6-13-57	4	357.03	380.83	23.80
8-6-57	5	241.26	257.35	16.09
8-13-57	6	242.73	258.91	16.18
9-12-57	7	370.57	395.28	24.71
9-19-57	8	446.71	476.49	29.78
10-21-57	9	611.95	652.75	40.80
10-31-57	10	241.26	257.35	16.09
11-22-57	11	366.05	390.46	24.41

* Item No. 200-C of Minimum Rate Tariff No. 10, southern territory commodity rate of 24 cents per 100 pounds, minimum weight 40,000 pounds, for 171.4 constructive miles from Crestmore to point of destination 1.4 constructive miles east of the mileage basing point for El Centro. Constructive mileage is computed in accordance with Item 50-B of Minimum Rate Tariff No. 10 and Distance Table No. 4.

The evidence further shows that on May 20 and May 21, 1957, respondent transported 9 shipments of gypsum rock from Plaster City to Oro Grande, California (Exhibits Nos. 14 through 22); that these shipments were each separately documented with a weight certificate, a freight bill, an invoice and a bill of lading; that none of said documents shows the weight or rate for the shipment; that all of said documents were delivered by respondent to the shipper upon the completion of the transportation involved; and that the only record of the shipments retained by respondent was a manifest freight bill (Exhibit No. 23) showing the date of the shipment, the number of the weighmaster's ticket, the consignor's name and address, the weight, the rate in cents per 100 pounds, the total charges for all shipments listed on the manifest, and the number of the check by which said charges were paid. The record further shows that the above method of handling is used by respondents for all shipments of the

same commodity carried for the consignor to the company named and that there were, during the month of May, 1957, one or more truck-load shipments of said commodity each weekday.

The evidence further shows that respondents undercharged for the services shown on Exhibits Nos. 14 through 22 herein amounts as follows:

<u>Date</u>	<u>Exhibit No.</u>	<u>Amount Charged and Collected by Respondents</u>	<u>Correct Total Charges *</u>	<u>Amount Undercharged</u>
5-20-57	14	\$ 96.91	\$ 138.27	\$ 41.36
5-20-57	15	97.96	139.75	41.79
5-20-57	16	100.08	142.78	42.70
5-20-57	17	95.47	136.21	40.74
5-21-57	18	96.59	137.79	41.20
5-21-57	19	96.08	137.08	41.00
5-21-57	20	101.59	144.00	42.41
5-21-57	21	100.12	142.83	42.71
5-21-57	22	99.94	142.58	42.64

* See Exhibit No. 25 herein for explanation of correct charges. In each instance the shipment was rated by the staff as a separate shipment for the reason that the carrier failed to issue a single shipping document in conformance with the provisions of Item 85-A of Minimum Rate Tariff No. 2.

The Commission having considered the evidence of record and having found the facts as hereinbefore set forth, concludes that James S. Phillips and David F. Ryerson, doing business as Phillips Trucking, have violated the provisions of Sections 3664 and 3667 of the Public Utilities Code of California in that they charged and received a lesser compensation for the transportation of freight than the applicable charge prescribed in Minimum Rate Tariff No. 2 and Minimum Rate Tariff No. 10, and have violated the provisions of Section 3737 of the Public Utilities Code of California in that they have failed to issue shipping documents in conformance with the provisions of Item 255 Series of Minimum Rate Tariff No. 2.

O R D E R

A public hearing having been held in the above-entitled proceeding, the Commission being fully advised in the premises and having made findings and conclusions as set forth above,

IT IS ORDERED:

(1) That Radial Highway Common Carrier Permit No. 36-3268 and Highway Contract Carrier Permit No. 36-3488, issued to David F. Ryerson and James S. Phillips, doing business as Phillips Trucking, be and the same hereby are suspended for a period of five consecutive days starting at 12:01 a.m. on the second Monday following the effective date hereof.

(2) That David F. Ryerson and James S. Phillips shall post at their 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 their radial highway common carrier permit and their highway contract carrier permit have been suspended by the Commission for a period of five days.

(3) That David F. Ryerson and James S. Phillips shall examine their records for the period from January 1, 1957 until the effective date of this order for the purpose of ascertaining if any additional undercharges have occurred other than those mentioned in this decision. *Added*

(4) That David F. Ryerson and James S. Phillips are hereby directed to take such action as may be necessary to collect the amounts of undercharges set forth in the preceding opinion together *Revised*

with any additional undercharges found during the examination ordered by paragraph (3) of this order and to notify the Commission in writing upon the receipt of such collections.

(5) That in the event the charges to be collected as provided in paragraph (4) 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 the first Monday of each month, 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.

The Secretary of the Commission is directed to cause personal service of this order to be made on each of the respondents herein, and this decision shall become effective twenty days after the date of service on either of said parties.

Dated at San Francisco, California, this 10th day of September, 1958.

E. L. Fox
President

Paul Butcher

Thomas J. Jensen
Commissioners