

**ORIGINAL**Decision No. 57504

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the operations,  
rates and practices of P. M.  
EDMINISTER.

Case No. 6167

Philip M. Edminister, in propria persona.

Hugh N. Orr, for the Commission staff.

O P I N I O N

This Commission, on August 12, 1958, issued an order of investigation into the operations, rates and practices of P. M. Edminister who is engaged in the business of transporting property over the public highways as a radial highway common carrier and as a highway contract carrier. The purpose of this investigation is to determine whether the respondent has acted in violation of 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 applicable charges prescribed by the Commission's Minimum Rate Tariff No. 2 (dealing with general commodities) and whether there have been violations under Section 3737 of said code.

A public hearing was held on September 26, 1958 in Redding, before Examiner James F. Mastoris, at which time evidence was presented and the matter was duly submitted.

At the time of the hearing, representatives of the Commission's Rate Branch and Field Section testified on behalf of the Commission staff; Mr. P. M. Edminister testified on his own

behalf. From the evidence produced by the staff there appear to have been numerous violations of said Minimum Rate Tariff No. 2, as to this carrier's radial highway common carrier permit. These violations resulted primarily because the respondent with respect to nineteen shipments of lumber charged his shippers a rate based upon improper minimum weight computation in some cases and erroneous calculation of constructive mileage in others. Clerical errors also accounted for some violations.

Based upon the evidence presented, the Commission hereby finds and concludes that the following facts exist:

(1) During the period from June 1957 through January 1958, P. M. Edminister operated as a radial highway common carrier and as a highway contract carrier pursuant to permits issued by the Commission.

(2) During this period of time, respondent had in his possession the Commission's Minimum Rate Tariff No. 2 and Distance Table No. 4, together with all supplements and amendments thereto.

(3) During this period of time, respondent transported certain shipments of lumber which are more particularly set forth in the following table. Further relevant facts relative to these shipments, which the Commission hereby finds, together with our conclusions concerning the correct minimum charges for such shipments, are set forth as follows:

<u>Frts. Bill No.</u>	<u>Date</u>	<u>Point of Destination</u>	<u>Wt. in Pounds</u>	<u>Charge Assessed by Re- spondent</u>	<u>Correct Minimum Charge</u>	<u>Under- charge</u>
0524	6/ 3/57	Red Bluff	41,140	\$ 86.39	\$ 98.90	\$12.51
0436	6/ 5/57	Red Bluff	43,800	91.98	100.74	8.76
0523	7/ 2/57	Central Valley	42,220	80.21	86.00	5.79
0445	7/12/57	Central Valley	46,100	64.53	92.20	27.67
0681	10/22/57	Central Valley	40,000	76.00	86.00	10.00
0682	10/23/57	Central Valley	40,800	77.52	86.00	8.48
0683	10/24/57	Central Valley	42,500	80.75	86.00	5.25
0859	12/ 2/57	Chico	47,500	71.25	76.00	4.75
0647	12/ 5/57	Central Valley	53,600	101.84	107.20	5.36
0648	12/ 6/57	Central Valley	44,000	83.60	88.00	4.40
0649	12/ 7/57	Central Valley	54,600	103.74	109.20	5.46
0862	12/10/57	Central Valley	49,600	94.24	99.20	4.96
0863	12/10/57	Central Valley	47,300	89.87	94.60	4.73
0708	12/13/57	Redding	42,700	64.05	68.80	4.75
0865	12/13/57	Central Valley	49,600	91.24	99.20	7.96
0866	12/14/57	Central Valley	52,000	98.80	104.00	5.20
0869	12/14/57	Central Valley	45,100	85.69	90.20	4.51
0877	1/15/58	Central Valley	43,300	82.27	86.60	4.33
0879	1/16/58	Central Valley	50,100	95.19	100.20	5.01

Respondent conceded that the above violations occurred largely because of the aforementioned mistaken application of the correct mileage. In addition, Mr. Edminister changed the constructive mileage in his rating of certain shipments because road improvements over U.S. Highway 299 affected the number of constructive miles between the point of origin and the point of destination. Testimony was also received that some of the shipments were rated upon a rate supplied by a representative of the Commission's Field Section.

Based upon the foregoing facts, the Commission hereby finds and concludes that respondent violated Sections 3664 and 3667 of the Public Utilities Code by charging and collecting a lesser compensation for the transportation of lumber than the applicable minimum rates prescribed by the Commission's Minimum Rate Tariff No. 2, resulting in total undercharges amounting to \$139.88.

In view of the respondent's evidence, it appears that the violations in question occurred largely as a result of simple, and perhaps understandable, mistakes in applying Minimum Rate Tariff No. 2. In those cases where the carrier changed the constructive mileage, such, being without Commission approval, was of course improper and unlawful. Carriers cannot take it upon themselves to change Commission rules and regulations. If road conditions have changed in such a manner that the constructive mileage between certain points will probably be affected, the proper remedy is to bring the matter to the attention of the Commission for possible revision of the Commission's Distance Table rather than unilaterally changing the mileage in rate computations.

Because there were sufficient violations over and above the shipments where it was alleged that erroneous representations were made by a Commission employee, no good purpose would be served by discussing the equities and responsibilities flowing from such representations. The outcome of this decision will not be affected by said shipments.

The staff offered additional evidence which implied that these violations occurred with intent to systematically charge under the minimum rates. Giving due weight to such evidence, it appears insufficient to support a finding of deliberate attempts to violate the law or the provisions of the tariff.

The shipping documents themselves (Exhibit 1) show that Section 3737 of the Public Utilities Code was violated because complete document information wasn't listed as required under Item 255 of Minimum Rate Tariff No. 2. However, the evidence was insufficient to show that this carrier violated Item 250 of said tariff.

This carrier's gross revenue for 1957 amounted to over \$105,000 with its net profit totaling approximately \$7,000. Its records show a \$7,000 net profit as of May 30, 1958, based upon approximately \$51,000 gross revenue. Total revenue for August 1958 amounted to approximately \$11,000 with expenses totaling \$10,000. He operates 4 trucks and trailers and employs six drivers.

Based upon the foregoing circumstances, respondent's operating rights will be suspended for a period of five days and he will be ordered to collect the undercharges hereinabove found. Respondent will also be directed to examine his records from May 1, 1957 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, if any, he has found. Respondent will also 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 Radial Highway Common Carrier Permit No. 45-1001 and Highway Contract Carrier Permit No. 45-1293 issued to P. M. Edminister are hereby suspended for five consecutive days starting at 12:01 a.m. on the second Monday following the effective date of this order.
2. That P. M. Edminister 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 and highway contract carrier permit have been suspended by the Commission for a period of five days.

3. That P. M. Edminister shall examine his records for the period from May 1, 1957 to the present time for the purpose of ascertaining if any additional undercharges have occurred other than those mentioned in this decision.

4. That within ninety days after the effective date of this decision, P. M. Edminister shall file with the Commission a report setting forth all undercharges found pursuant to the examination hereinabove required by paragraph 3.

5. That P. M. Edminister 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 3 of this order, and to notify the Commission in writing upon the consummation of such collections.

6. That, in the event charges to be collected as provided in paragraph 5 of this order, or any part thereof, remain uncollected 120 days after the effective date of this order, P. M. Edminister 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, until such charges have been collected in full or until further order of this Commission.

The secretary of the Commission is directed to cause personal service of this order to be made upon P. M. Edminister and this order shall be effective twenty days after the completion of such service upon the respondent.

Dated at San Francisco, California, this 21<sup>st</sup> day of October, 1958.

E. Lynn Fox  
President

John E. Mitchell

Paul West Kessen

Walter K. ...

Theodore ...  
Commissioners