

Decision No. 57681**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
SPENCER TRUCK COMPANY, a corpora-
tion.

Case No. 6142

Hugh N. Orr, for the Commission staff.
Robert S. Crossland, for respondent.

O P I N I O N

This is an investigation on the Commission's own motion into the operations, rates and practices of Spencer Truck Company, a corporation, as set forth in the Commission's order of July 8, 1958.

A duly noticed public hearing was held in Fresno on October 15, 1958, before Examiner Rowe.

It was stipulated that respondent has been operating under the authority stated in the order of July 8, 1958, and that service has been duly made upon it of Minimum Rate Tariff No. 2 and the Mileage Table and all amendments and supplements thereof. It was also conceded that twenty one of the twenty two freight bills referred to in the order of investigation were presented and collected as alleged. No evidence was adduced to support an assertion that freight bill numbered 15806, dated November 29, 1957, was in any respect improper.

A commodity described on a number of bills variously as Shed A Leaf Plant Defoliant NOIBN, Defoliant, Shed A Leaf and Shed-A-Leaf Reg. was rated and charged for as agricultural insecticide or fungicide as an exempt commodity within the meaning of Minimum Rate Tariff No. 2 although shown by the shipper on its bills of lading as a 'defoliant'. It appears, and the Commission finds from the expert testimony that this commodity should have been rated and charged as a

defoliant and not as exempt agricultural freight. The same finding and determination applies to products such as Sierra White Talc, Friarite, Soap Stone and Mineral Mix.

The other undercharges enumerated appear to have been and are found to be the result of the carrier's mistake and were not willful. A minimum tariff cannot be successfully enforced unless the carrier is required to properly rate his freight service. The proper construction of a minimum tariff may be difficult at times. However, this difficulty and the resultant confusion may be considered by the Commission in imposing punishment for violations but not in determining whether the carrier should or should not be required to collect undercharges. In view of the foregoing, the Commission hereby finds and concludes that respondent violated Sections 3664 and 3667 of the Public Utilities Code by charging, demanding, collecting or receiving a lesser compensation for the transportation of freight than the minimum charges prescribed in the Commission's Minimum Rate Tariff No. 2 resulting in undercharges as follows:

<u>Freight Bill No.</u>	<u>Date</u>	<u>Amount of Undercharge</u>
14816	8-12-57	\$81.52
14946	8-28-57	46.58
14786	8- 7-57	9.87
15235	10-9-57	69.08
15893	12-10-57	<u>48.48</u>
Total Undercharges		\$255.53

Respondent will be ordered to collect the undercharges hereinabove found. Respondent will also be ordered to examine its records for the period of September 1, 1957, to the present time for the purpose of ascertaining whether additional undercharges exist. Respondent will be ordered to comply with Commission rules in connection with the rating of shipments and charges therefor.

O R D E R

Based upon the foregoing findings and conclusions,
IT IS ORDERED that:

1. Respondent shall cease and desist from all future violations of the Commission's Minimum Rate Tariff No. 2.

2. Respondent shall examine its records for the period from September 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.

3. Respondent is hereby directed to take such action as may be necessary to collect the amount of undercharges set forth in the preceding opinion, together with any additional undercharges found during the examination ordered by paragraph 2 of this order, and to notify the Commission in writing upon the receipt of such collections.

4. In the event that any of the charges to be collected, or any part thereof, as ordered in paragraph 3 of this order, remain uncollected eighty days after the effective date of this order, respondent shall submit to the Commission on the first Monday of each month a report of undercharges remaining to be collected and specify the action taken to collect such undercharges and the result of such action until such undercharges have been collected in full or until the further order of the Commission.

5. The Secretary of the Commission is directed to cause personal service of this order to be made upon respondent, and this order shall be effective twenty days after the completion of such service.

Dated at San Francisco, California, this
2nd day of December, 1958.

[Signature]
President
[Signature]
[Signature]
Commissioners

Commissioner Theodore H. Jenner, being necessarily absent, did not participate in the disposition of this proceeding.