

**ORIGINAL**Decision No. 58244

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the operations,  
rates, and practices of WEST TRUCKING  
SERVICE, INC., a corporation.

Case No. 6075

Marvin Handler, for respondent.  
Eugene A. Feise, for Calaveras Cement Co.  
and Michael Lindeman, for Lindeman Bros.,  
Inc., interested parties.  
Martin J. Porter, for the Commission staff.

O P I N I O N

The Commission instituted the present investigation on March 11, 1958. Public hearings were held before Examiner John Power at San Francisco on August 1 and December 16, 1958. On the latter date the matter was submitted and is now ready for decision.

Testimony was received from four witnesses. Two represented the Commission staff's enforcement and rate branches, respectively. Respondent presented an operating and a rate witness. Extensive documentary evidence was received.

The alleged violations involved application of Minimum Rate Tariff No. 7 (covering dump truck operations). The staff's investigation developed, and the staff rate exhibit reflected, 14 instances of violation of Tariff No. 7. All of these were violations of certain rules and regulations relating to documents. The staff rate witness was unable to rate any of the 14 transactions listed in the exhibit. In each case the inability to rate was based on lack of necessary

supporting documents. Respondent requested the privilege of presenting its defense at a later hearing.

The second day of hearing in this matter was originally set for a late October date. Very shortly prior to this date the missing documents, or most of them, were discovered. The discovery resulted in a change of respondent's theory of its defense and a further continuance was requested and granted so that the new defense could be organized. A traffic consultant retained by respondent testified at the second hearing. He presented a rate exhibit in which he had succeeded in rating all of the 14 invoices contained in the staff exhibit. He was able to do this because of the discovery of the additional documents. In spite of the witness's ability to rate the shipments there was a violation of a tariff rule in eight of them. In each of these eight cases the mileage rates were applied. In each case the amount of the charge was as great, or greater, than the minimum rate applicable to the movement. The tariff, however, requires that in order to apply mileage rates the shipper must elect in writing, in advance, to use this type of rate. In each of the eight cases the written election by the shipper was not present. Respondent's president testified that shippers had refused to give him such written election, or written orders as the witness called them, although they desired to be billed at this type of rate.

As an additional defense respondent's president testified that Tariff No. 7 is complex and difficult to apply for individuals who are not specially trained to do so. He testified that he and his office manager had attempted to apply it correctly but were not sure that they had. He further testified that during June of 1958 he

revised his office procedure and forms in an effort to secure greater compliance with the tariff. This reform of office procedure apparently did not succeed. Respondent decided to go into some other type of trucking. Cement was selected. Respondent sold one road unit of equipment. It leased ten others to another trucking firm and at the time of the final hearing was negotiating a sale of these to the lessee firm. The last two road units were retained and used to subhaul for other carriers.

It appears that respondent has withdrawn from the type of traffic out of which the violations arose, and has remained out of it for a period of time longer than the Commission has been accustomed to impose on other similarly situated carriers. It is likewise true that, in all cases, the charges exceeded the minimum charges imposed by the particular type of rate adopted. The violations shown, involved incorrect selection of the type of rate to be applied. For the reasons just noted a suspension does not appear to be indicated and, therefore, none will be imposed.

The Commission finds that West Trucking Service, Inc., performed transportation covered by Minimum Rate Tariff No. 7 of this Commission, that certain transportation was billed at distance rates contained in Section 2 of said tariff without first having received a written notice of the shipper's intention to ship under rates in said Section 2 as required by said Minimum Rate Tariff No. 7.

O R D E R

Investigation having been instituted, public hearings held, and the Commission basing its decision on the findings set forth in the foregoing opinion,

IT IS ORDERED that the Commission investigation in Case No. 6075 be, and it hereby is, discontinued.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 7th day of April, 1959.

[Signature]  
President  
[Signature]  
[Signature]  
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Commissioners