

ORIGINALDecision No. 59546

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of BING L.
CHONG, SAM L. CHONG, CHAN TAI OY,
THOMAS CHAN, DANIEL CHAN, EDWARD
CHAN and DAVIS SUN, copartners
doing business as GENERAL PRODUCE
COMPANY.

Case No. 6222

Investigation on the Commission's
own motion into the operations,
rates and practices of GEORGE HING,
dba GEORGE HING TRUCKING SERVICE.

Case No. 6272

Marvin Handler, on behalf of both respondents.
Hugh Orr, on behalf of the Commission staff.

O P I N I O N

Because of the relationship between the parties and the similarity in issues and persons involved in these proceedings, the above-entitled matters have been consolidated for the purpose of this decision and order. Case No. 6222 is an investigation on the Commission's own motion into the operations, rates and practices of Bing L. Chong, Sam L. Chong, Chan Tai Oy, Thomas Chan, Daniel Chan, Edward Chan and Davis Sun, copartners doing business as General Produce Company. Case No. 6272 is a similar investigation with respect to George Hing, doing business as George Hing Trucking Service. Both respondents are engaged in the transportation of property for compensation over the public highways of the State of California as radial highway common and as highway contract carriers.

Pursuant to the orders of these investigations, public hearings were held in San Francisco before Examiner James F. Mastoris on May 13, 1959 and November 24, 1959 on the General Produce Company

case, and on November 24 and 25, 1959 on the George Hing Trucking Service investigation. Evidence was presented at the hearings and the matters submitted, subject to the receipt of a late-filed exhibit in Case No. 6222.

Purpose of Investigation

These investigations were instituted for the purpose of determining whether the respondents:

- (1) Violated Sections 3664 and 3667 of the Public Utilities Code by charging and collecting a lesser compensation for the transportation of property than the applicable charges prescribed by Minimum Rate Tariffs Nos. 2 and 8.
- (2) Violated the above sections by otherwise failing to comply with various provisions of said tariffs.
- (3) Violated Section 3668 of the Public Utilities Code by employing a device designed to assist or permit a shipper to obtain transportation of property at less than the minimum rates prescribed by the Commission.

In addition, Case No. 6222 was also inaugurated for the purpose of determining whether the General Produce Company has failed to report all revenues received and to pay fees required by Section 5003 of said Public Utilities Code and whether respondent George Hing was operating as an employee or as an alter ego for said General Produce Company, and, if so, whether he should be required to pay the carriers employed by him the minimum rates specified in Minimum Rate Tariffs Nos. 2 and 8. Case No. 6272 was also issued for the purpose of ascertaining if said George Hing was acting as a Motor Transportation Broker without this Commission's authorization.

Staff's Evidence Against General Produce Company

The staff of the Commission presented evidence that during the period from April 1957 to March 1958, General Produce Company transported twenty-four shipments of box shoo, cases of

oil, frozen foods and general produce between certain points in central and southern California at rates lower than the minimum prescribed in said Minimum Rate Tariffs Nos. 2 and 8. In addition, evidence was adduced that this carrier violated multiple provisions of said tariffs including, among other things, sections involving the assessment and collection of off-rail, loading and unloading, and refrigeration charges as well as specified requirements prohibiting improper consolidation of shipments and extension of split pickup and delivery advantages to single multiple-lot shipments.

Further, the staff contended and offered proof in support thereof that Section 3668 of the Public Utilities Code had been violated by this company as a result of certain transactions involving the purchase and sale of grain. It is alleged that this company, which operates a large general wholesale produce business in Sacramento in conjunction with its trucking operations, ostensibly purchased grain at a point of origin indicated by a broker at a price dictated by said broker. This grain was picked up by General Produce's trucks and transported to a point of destination, usually in southern California, which was also specified by the broker where it was sold at a price ordered by said broker. In some instances the purchase and sale of said grain occurred before the respondent's trucks departed from the point of origin. The staff argues that the difference or "profit," retained by the trucker, between the purchase price and the selling price, constitutes a "charge" which in this case is less than the minimum rate prescribed for the carriage of grain between the points in issue.

Evidence in aggravation was also offered showing that this carrier has received prior warnings from staff representatives in 1954 and 1955 with respect to previous improper rating procedures and assessments.

Position of General Produce Company

Mr. George Hing, testifying on behalf of the respondent, General Produce Company, conceded that the shipments in question were improperly rated and that the other violations of the aforementioned tariffs occurred as charged. He contended that as truck dispatcher for said firm he attempted to assess the appropriate rates and follow the requirements of the tariffs but that because of his inexperience he was incapable of accurately determining the correct charge. Moreover, he relied on data supplied by his firm's shippers, which information proved to be in error. He further testified that in many instances he was compelled to assess rates submitted by certain shippers in order to meet competition. It was stated that his rating practices were his sole responsibility and that none of the copartners of General Produce Company had knowledge of such practices. The "buy and sell" grain transactions were entered into at his suggestion for the purpose of keeping the company's trucks busy during inactive periods of the year. Testimony was received that since the audit and investigation by the field staff of this Commission steps have been taken to remedy the rating errors found to exist in these proceedings. Among other things the carrier is employing the services of a transportation rate expert and a transportation attorney.

Staff's Evidence Against George Hing

Verbal and documentary evidence was produced indicating that the aforementioned individual, George Hing, conducted his own trucking service operating out of the General Produce Company's offices in Sacramento during the same period in which he was also truck dispatcher for said General Produce Company. He owned no trucks of his own and utilized the services of sub-haulers entirely in his transportation for-hire. In transporting produce during the

period from March to December, 1957, between various points in northern, central and southern California, twenty-five shipments were improperly rated. Moreover, evidence was submitted demonstrating that the carrier failed to comply with substantially the same provisions evident in the General Produce Company case. The erroneous application of the split pickup and delivery rules was more pronounced in this proceeding than in the General Produce Company investigation. On most all of the shipments in question, commodities owned or possessed by said General Produce Company were carried by the respondent.

It was contended that Mr. Hing, although ostensibly acting in his individual capacity as a permitted trucker, was, when carrying produce for the General Produce Company, permitting and enabling said company to ship commodities at a rate less than the prescribed minimum because payment was made to the sub-hauler performing the actual transportation at rates less than the minimum. The staff stated that Mr. Hing was in fact an alter ego for the General Produce Company. In addition to the foregoing activities, he operated entirely from the latter's place of business, was paid a salary and a commission by the company, and used bookkeeping records and other facilities of the company. Testimony was received that his own trucking firm was established, following a conversation with one of the copartners of General Produce Company, for the purpose of obtaining savings for said company through the use of sub-haulers. His commission was measured by the savings realized.

Defense by George Hing

No defense was offered nor did Mr. Hing appear at the hearings. His attorney declared that the investigation should be dismissed because the carrier discontinued all operations on

October 15, 1959 and was granted voluntary revocation of his permits by this Commission on November 16, 1959.

Findings and Conclusions

In view of the foregoing evidence, we hereby find and conclude:

(1) That General Produce Company violated Sections 3664 and 3667 of the Public Utilities Code by charging and collecting a lesser compensation for the transportation of property than the applicable charges specified by Minimum Rate Tariffs Nos. 2 and 8.

(2) That George Hing, doing business as George Hing Trucking Service, violated the above sections by charging and collecting a lesser compensation for the transportation of property than the applicable charges prescribed by said minimum rate tariffs.

(3) That General Produce Company violated the following sections of Minimum Rate Tariff No. 2: Items Nos. 210, 185, 60 and 255. In addition, said carrier violated the following sections of Minimum Rate Tariff No. 8: Items Nos. 50, 170, 180 and 255.

(4) That George Hing violated the following sections of Minimum Rate Tariff No. 8: Items Nos. 170, 180 and 255.

(5) That although the circumstances and timing demonstrate under the facts of this case that the aforementioned "buy and sell" grain transactions lead us to the conclusion that the General Produce Company as a permitted carrier was not transporting grain in its proprietary capacity but rather as a carrier for-hire, nevertheless there is insufficient evidence to prove that the difference between the purchase price and the selling price was below the minimum rate prescribed. Evidence is lacking as to the lowest minimum rate. Accordingly, we find that the respondent General Produce Company did not violate Section 3668 of the Public Utilities Code.

(6) That George Hing, doing business as George Hing Trucking Service, was an employee and the alter ego for General Produce Company and that as an alter ego for said company did, by means of a known false device, the fraudulent use of sub-haulers, permit and assist a shipper, the General Produce Company, in obtaining transportation at rates less than the minimum prescribed by this Commission. We further find, as a result of this violation, along with the violations found in paragraphs (2) and (4), that sufficient grounds have been established to revoke all of this carrier's operating rights pursuant to Section 3774 of the Public Utilities Code.

(7) That respondent General Produce Company failed to record all charges for transportation performed, to report all revenues received, and to pay all required fees, in violation of Public Utilities Code Section 5003.

(8) That there was no evidence to establish that George Hing had been acting as a Motor Transportation Broker without authorization by this Commission.

(9) That General Produce Company should be ordered to collect from shippers the difference between charges billed and collected and the charges required by said Minimum Rate Tariffs Nos. 2 and 8. Relevant facts pertinent to the shipments in issue, together with our conclusions concerning the correct minimum charges for such shipments, are set forth in the table delineated in Appendix A, attached to the order that follows.

Penalty

As to General Produce Company, it is clear that the violations that occurred resulted primarily from its dispatcher's negligence which, in many instances, was gross and inexcusable. It seems unlikely that the copartners were unaware of Mr. George Hing's

activities, but, even assuming that they had no knowledge thereof, they are nevertheless bound by his actions and conduct under these facts. Therefore, in view of the nature of the violations, the prior warnings, and the scope of the respondents' operations, the operating authority of the carriers shall be suspended for a period of ten days. In addition, the respondents will be ordered to collect the undercharges set forth in Appendix A. Respondents will also be directed to examine their records from April 1, 1958 to the present time in order to determine whether any additional undercharges have occurred, and to file with the Commission a report setting forth the additional undercharges, if any, they have found. They will also be directed to collect any such additional undercharges.

In view of George Hing's voluntary revocation of his permits, further action by this Commission is unnecessary and the investigation on Case No. 6272 should be discontinued. Because of the gravity of the violations so found against this carrier, reinstatement of his operating rights as well as the issue of future permits should not be granted for a period of four years from the effective date of this decision.

O R D E R

A public hearing having been held and based upon the evidence therein adduced,

IT IS ORDERED:

1. That Radial Highway Common Carrier Permit No. 34-2099 and Highway Contract Carrier Permit No. 34-3435 issued to General Produce Company are hereby suspended for ten consecutive days starting at 12:01 a.m. on the second Monday following the effective date of this order.

2. That General Produce Company shall post at its 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 its radial highway common carrier permit and its highway contract carrier permit have been suspended by the Commission for a period of ten days; that within five days after such posting, General Produce Company shall file with the Commission a copy of such notice, together with an affidavit setting forth the date and place of posting thereof.

3. That General Produce Company shall examine its records from April 1, 1958 for the purpose of ascertaining if any additional undercharges have occurred, other than those mentioned in Appendix A attached to this order.

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

5. That General Produce Company is hereby directed to take such action as may be necessary, including court proceedings, 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 one hundred and twenty days after the effective date of this order, General Produce Company 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.

7. That the above-entitled Case No. 6272 be, and is, hereby discontinued. It is further ordered that Radial Highway Common Carrier Permit No. 34-3170 and Highway Contract Carrier Permit No. 34-3436, issued to George Hing, doing business as George Hing Trucking Service, and revoked by this Commission on November 16, 1959, shall not be reinstated for a period of four years from the effective date of this order. In addition, no new permit, as specified in Division 2 of the Public Utilities Code, shall be issued to said George Hing for a period of four years from the effective date of this order.

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

The Secretary of this Commission is also directed to cause personal service of this order to be made upon George Hing Trucking Service and this order shall be effective twenty days after the completion of such service upon the respondent.

Dated at San Francisco, California, this 26th day of January, 19 60.

[Signature]
President
[Signature]
[Signature]
Theodore Jensen
Commissioners

APPENDIX A

<u>Freight Bill No.</u>	<u>Date</u>	<u>Charge Assigned by Respondent General Produce Company</u>	<u>Correct Minimum Charge</u>	<u>Undercharge</u>
00360	4/16/57	\$146.40	\$254.47	\$108.07
01084	2/28/58	268.00	301.40	33.40
00368	4/18/57	158.78	210.12	51.34
00418	5/ 5/57	252.63	283.73	31.10
00952	12/11/57	198.55	230.16	31.61
00375	4/24/57	258.78	292.24	33.46
00422	5/ 6/57	259.02	292.51	33.49
00922	1/14/58	238.80	302.86	64.08
01050	2/14/58	292.46	330.70	38.24
00381	4/24/57	243.11	276.19	33.08
00385	4/25/57	216.50	246.75	30.25
00390	4/25/57	95.04	129.60	34.56
00505	6/ 3/57	240.00	270.07	30.07
00515	6/ 6/57	164.16	228.35	64.19
00788	9/15/57	104.20	115.62	11.42
01067	2/24/58	126.18	153.93	27.75
00813	9/30/57	21.65	32.89	11.24
00837	10/14/57	196.65	227.16	30.51
51729	11/ 4/57	198.24	258.59	60.35
00883	11/ 7/57	252.00	304.29	52.29
00890	11/12/57	79.20	134.19	54.99
01089	3/ 2/58	123.60	175.32	51.72
01107	3/ 9/58	123.60	173.01	49.41
73319	2/28/58	187.50	307.34	119.84

Total undercharges amount to \$1,086.46.