

Decision No. 60392**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 CLARENCE  
 JOSEPH PERRY, doing business as  
 C.J. PERRY TRUCKING.

Case No. 6341

Arthur F. Malleson, for respondent.High Orr, for the Commission staff.O P I N I O N

The Commission instituted this investigation on its own motion on August 25, 1959. The principal purpose is to ascertain whether or not respondent has violated Section 3667 of the Public Utilities Code by collecting charges less than those established as minimum by Minimum Rate Tariff No. 2 and applicable at the time various transportation services were performed. Another purpose is to fix the penalty to be assessed in the event that the accusations were sustained by the evidence.

Respondent attended the hearing accompanied by a representative but did not present any evidence. The representative made a statement that there was a mistake in application of rates. The representative also participated by cross-examination.

The staff presented two witnesses. An enforcement witness described the investigation and identified the supporting documents relating to the transactions considered. A rate expert then presented an exhibit giving the correct, lawful, minimum ratings and charges based upon a study of the supporting documents and application of appropriate common carrier tariffs and Commission minimum rate orders.

The evidence is summed up in tabular form below. As to each horizontal line in the table the Commission finds:

1. That the transportation identified by the freight bill number in column one was actually performed and that a freight bill having the number given was issued, applicable to such transportation service.

2. That respondent, Clarence Joseph Perry, did assess to the party in each case responsible the charge shown in column two.

The Commission concludes:

1. The amount shown in column three is the lowest lawful rate or charge applicable to the transportation service indicated in the same horizontal line in which such rating appears.

2. That Clarence Joseph Perry, in each transaction tabulated below, did assess an undercharge in the amount shown in column four.

3. That in each transaction tabulated Clarence Joseph Perry did violate Section 3667 of the Public Utilities Code in that said Perry did charge, demand, collect and receive for the transportation of property, rates or charges less than the minimum rates and charges applicable to such transportation established or approved by the Commission.

<u>Column One</u> <u>Freight</u> <u>Bill No.</u>	<u>Column Two</u> <u>Charge as</u> <u>Assessed</u>	<u>Column Three</u> <u>Minimum</u> <u>Rate or Charge</u>	<u>Column Four</u> <u>Undercharge</u>
2396	\$362.74	\$383.08	\$20.34
2504	318.12	335.96	17.84
2512	165.60	198.52	32.92
2677	263.62	271.73	8.11
2686	204.25	218.50	14.25
2744	191.88	201.80	9.92
3208	298.22	340.34	42.12
3489	300.11	316.63	16.52
3504	284.58	312.12	27.54
3725	169.91	194.86	24.95
3748	310.74	340.81	30.07
4101	315.47	407.70	92.23
4148	323.08	398.35	75.27
4233	143.09	157.89	14.80
4268	307.77	337.54	29.77
		Total Undercharges	\$456.65

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. 1-9036 issued to Clarence Joseph Perry is hereby suspended for three consecutive days starting at 12:01 a.m. on the second Monday following the effective date of this order; and that he shall not lease the equipment or other facilities used in operations under this permit for the period of the suspension or directly or indirectly allow his equipment or facilities to be used to circumvent the suspension.

2. That Clarence Joseph Perry 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 has been suspended by the Commission for a period of three days; that within five days after such posting Clarence Joseph Perry 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 Clarence Joseph Perry shall examine his records for the period from June 4, 1958, 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, Clarence Joseph Perry shall complete the examination of his records hereinabove required by paragraph 3 and file with the Commission a report setting forth all undercharges found pursuant to that examination.

5. That Clarence Joseph Perry is hereby directed to take such action, including legal 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 one hundred twenty days after the effective date of this order, Clarence Joseph Perry shall institute legal proceedings to effect collection and 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 Clarence Joseph Perry and this order shall be effective twenty days after the completion of such service upon the respondent.

Dated at San Francisco, California, this 12<sup>th</sup> day of July, 1960.

[Signature]  
President  
[Signature]  
[Signature]  
[Signature]  
Commissioners