

ORIGINAL

Decision No. 60437

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 own motion into the operations,)
 rates and practices of)
 THEODORE LEROY WOLFE, doing busi-)
 ness as Roy Wolfe Trucking.)

Case No. 6421

A. R. Kerstetter, for respondent.
Hugh W. Orr, for the Commission staff.

O P I N I O N

Order of Investigation

On February 16, 1960, the Commission instituted its order of investigation into the operations, rates and practices of Theodore LeRoy Wolfe, doing business as Roy Wolfe Trucking, who is operating as a radial highway common carrier and a highway contract carrier, for the purpose of determining:

1. Whether 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 in Minimum Rate Tariff No. 2.
2. Whether respondent has acted in violation of Section 3668 of the Public Utilities Code in that, by means of a device, i. e., an alleged agreement authorizing the shipper to deduct 10 per cent of the monthly balance owed for transportation as a "loading or handling" charge, respondent has assisted, suffered, or permitted the Mathews Lumber Co. to obtain transportation for property between points within this State at rates less than those established by the Commission in Minimum Rate Tariff No. 2.
3. Whether respondent has failed to bill and collect charges for transportation in conformity with the requirements of Item 250-A of Minimum Rate Tariff No. 2.

4. The order which should be issued by this Commission in the event it be found that any of the alleged undercharge violations have occurred.

Public Hearing

Pursuant to the order of investigation a public hearing was held in Sanger before Examiner Edward G. Fraser on April 5, 1960, and the matter was taken under submission at the close of the hearing.

Findings and Conclusions

Upon the evidence of record the commission finds that:

Respondent is engaged in the transportation of property over the public highways for compensation as a highway contract carrier pursuant to Highway Contract Carrier Permit No. 10-8888 and as a radial highway common carrier pursuant to Radial Highway Common Carrier Permit No. 10-7196, issued by this Commission.

The aforementioned transaction wherein respondent returned a portion of the transportation charge specified in Minimum Rate Tariff No. 2, to the shipper, by allowing the shipper to deduct a flat 10 per cent of the monthly balance due and owing respondent as a charge for loading the trucks of respondent, is a device within the meaning of Section 3668 of the Public Utilities Code by which respondent has permitted Mathews Lumber Co. to obtain transportation for property between points within this State at rates less than the applicable minimum rates then established by the Commission.

Respondent assessed and collected charges less than the applicable charges established by this Commission in Minimum Rate

Tariff No. 2, which resulted in undercharges as follows (from Exhibits Nos. 1, 2, 3, 4 and 7):

<u>Exh. No. 7 Part No.</u>	<u>Respondents' Freight Tag No.</u>	<u>Date</u>	<u>Amount of Undercharge</u>
1	787	2-05-59	\$ 4.36
1	788	2-18-59	4.93
1	789	2-19-59	5.26
1	790	2-20-59	4.44
	791	2-28-59	4.43
2	926	3-30-59	10.93
2	927	3-31-59	17.30
3	928	4--1-59	7.50
3	929	4--2-59	4.47
3	930	4--3-59	4.40
3	931	4--6-59	4.52
3	932	4--7-59	4.45
3	933	4--8-59	4.38
3	934	4--9-59	4.52
3	935	4-15-59	2.36
3	938	4-26-59	4.53
3	939	4-28-59	4.45

The total undercharges for the above shipments amount to \$88.63.

Respondent, through the use of the rebate agreement more fully described above, has acted in violation of Section 3668 of the Public Utilities Code in that, by means of a device, i. e. the "rebate agreement," respondent has assisted, suffered and permitted the Mathews Lumber Co. to obtain transportation for property between points within this State at rates less than those established by the Commission in Minimum Rate Tariff No. 2. Respondent has also 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 in Minimum Rate Tariff No. 2.

The Commission having found the facts as hereinabove set forth and concluding that respondent has violated Sections 3664, 3667 and 3668 of the Public Utilities Code, makes its order as follows:

O R D E R

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

IT IS ORDERED:

1. That Theodore LeRoy Wolfe is ordered to cease and desist acting in violation of Section 3668 of the Public Utilities Code by assisting, suffering, or permitting Mathews Lumber Co. or any other corporation or any other person, through the use of a "rebate arrangement" such as described in the opinion above, to obtain transportation for any property between points within this State at rates less than the minimum established or approved by this Commission.

2. That Radial Highway Common Carrier Permit No. 10-7196 and Highway Contract Carrier Permit No. 10-8888 issued to Theodore LeRoy Wolfe are hereby suspended for five 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 these permits for the period of the suspension or directly or indirectly allow his equipment or facilities to be used to circumvent the suspension.

3. That respondent 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; that within five days after such posting respondent shall file with the Commission a copy of such notice, together with an affidavit setting forth the date and place of posting thereof.

4. That respondent shall examine his records for the period from January 1, 1959 to the present time for the purpose of ascertaining if any additional undercharges have occurred other than those mentioned in this decision.

5. That within ninety days after the effective date of this decision, respondent 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.

6. That respondent 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 4 of this order, and to notify the Commission in writing upon the consummation of such collections.

7. That respondent is further directed to take such action as may be necessary, including court proceedings, to collect from Mathews Lumber Co. the amount of money deducted by said company from transportation charges assessed by respondent, as reflected in the exhibits received into evidence in this proceeding.

8. That in the event charges to be collected as provided in paragraphs 6 and 7 of this order, or any part thereof, remain uncollected one hundred twenty days after the effective date of this order respondent 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 respondent 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 July, 1960.

[Signature] President
[Signature]
[Signature]
[Signature] Commissioners
Theodore J. Deemer

Commissioner Everett C. McKeage, being necessarily absent, did not participate in the disposition of this proceeding.