

ORIGINAL

Decision No. 60497

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the operations,  
rates and practices of  
FRANK D. OLIVEIRA, JR.

Case No. 6437

Frank D. Oliveira, Jr., in propria persona.  
Hugh N. Orr, for the Commission Staff.

O P I N I O N

On March 22, 1960, the Commission issued an order instituting an investigation on its own motion into the operations, rates and practices of Frank D. Oliveira, Jr., who is engaged in the business of transporting property over the public highways as a radial highway common carrier. Pursuant to said order, a public hearing was held on May 26, 1960, at Tulare, before Examiner Edward G. Fraser, at which time evidence was presented and the matter was taken under submission.

Purpose of Investigation

The purpose of this investigation is to determine whether this respondent has violated Sections 3664 and 3667 of the Public Utilities Code by charging, demanding, collecting or receiving for the transportation of property as a highway permit carrier a rate less than the minimum established under Minimum Rate Tariff No. 2.

Findings

Based upon the evidence of record, we hereby find and conclude:

1. That respondent is engaged in the transportation of property over the public highways for compensation as a radial highway common carrier pursuant to Radial Highway Common Carrier Permit No. 16-1029 issued by this Commission.

2. That 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 through 14, inclusive.)

Freight Bill No.	Date	Charge Assessed: or Collected by: Respondent	Correct Charge	Undercharge
161	3/30/59	\$226.80	\$ 302.40	\$ 75.60
569	3/24/59	100.00	262.82	262.82
434	2/27/59	300.00	394.80	94.80
570	3/26/59	186.72	210.06	23.34
0651	4/16/59	242.21	347.26	105.05
899	4/15/59	241.00	294.00	53.00
494	4/ 1/59	160.00	355.07	195.07
493	4/ 1/59	100.00	335.92	235.92
0605	4/28/59	250.00	376.83	126.83
0603	4/ 7/59	160.00	204.39	44.39
172	4/28/59	228.20	278.40	50.20
399	3/ 3/59	201.10	270.90	69.80
415	3/17/59	140.00	158.05	18.05
563	3/16/59	271.32	302.97	31.65
488	3/18/59	140.00	214.46	74.46
466	3/20/59	218.55	327.83	113.64
483	3/18/59	195.75	246.65	50.90
495	4/ 6/59	232.74	272.56	39.82
490	3/27/59	185.58	245.46	59.88
162	3/27/59	296.98	315.84	18.86
405	2/ 2/59	171.61	233.22	61.61
4969	4/13/59	482.00	217.28	273.12
4971	4/18/59	508.80	776.50	267.70
4970	4/13/59	506.95	776.65	269.70
4972	4/21/59	753.00	1,154.73	401.73
4980	5/ 7/59	774.45	1,172.99	398.54
4978	5/ 8/59	767.40	1,168.60	401.20
4981	5/12/59	767.40	1,168.60	401.20
4977	5/ 2/59	766.25	1,168.19	401.94
4979	5/ 2/59	779.15	1,172.71	393.56
4982	5/21/59	733.00	1,149.78	416.78
4983	5/26/59	771.70	1,166.58	394.88
4984	5/27/59	481.90	746.93	265.03
4976	5/17/59	517.80	781.23	263.43
4975	5/ 4/59	491.60	772.07	280.47
4973	4/23/59	513.20	789.46	276.26
4974	4/27/59	734.10	1,126.56	392.46
418	3/23/59	237.76	384.10	146.34
564	2/13/59	218.00	316.10	94.10
441	3/10/59	884.12	1,212.38	328.26

Undercharges for these shipments amounted to \$7,872.59

3. That 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.

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

O R D E R

1. That Radial Highway Common Carrier Permit No. 16-1029 issued to Frank D. Oliveira, Jr., is 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 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 Frank D. Oliveira, Jr. 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 Frank D. Oliveira, Jr. 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 Frank D. Oliveira, Jr. 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.

4. That within ninety days after the effective date of this decision Frank D. Oliveira, Jr. 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 Frank D. Oliveira, Jr. 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, Frank D. Oliveira, Jr. 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 Frank D. Oliveira, Jr. and this order shall be effective twenty days after the completion of such service upon the respondent.

Dated at San Francisco, California, this 2<sup>nd</sup> day of August, 1960.

Ernest R. Bagg  
President  
John F. Hatcher  
William F. Dooly  
E. J. Fox  
Theodore J. J. J.  
Commissioners