

ORIGINAL

Decision No. 61094

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 own motion into the operations,)
 rates, and practices of R. E.)
 THARP, INC.)

Case No. 6481

A. R. Kerstetter, for R. E. Tharp, Inc.,
 the respondent.
Franklin G. Campbell, for the Commission
 staff.

O P I N I O NOrder of Investigation

On May 24, 1960, the Commission instituted its order of investigation into the operations, rates and practices of R. E. Tharp, Inc., 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 for the transportation of property sums less than the applicable minimum charges prescribed in Minimum Rate Tariff No. 2.
2. The order which should be issued by this Commission in the event it be found that any of the alleged violations have occurred.

Public Hearing

Pursuant to the order of investigation, a public hearing was held in Chowchilla before Examiner Edward G. Fraser on September 1, 1960.

Stipulations

It was stipulated that R. E. Tharp, Inc., is a California corporation; that its officers are R. E. Tharp, Norman Tharp, Vernon Lane and Ellen Tharp; that it holds permits as a radial highway

common carrier and as a highway contract carrier; that it was served with Minimum Rate Tariff No. 2 in 1950, and Distance Table No. 4 in 1951; that it also received all supplements thereto published to date.

Evidence Presented by the Staff

A representative of the Commission Transportation Division testified that he made an investigation of the respondent's operations during the period from May through August 15, 1959. Respondent was operating during this period with 28 tractors, 40 full trailers, 39 semitrailers and 3 trucks. Respondent also had a total of 36 employees, including 25 drivers and grossed \$510,000 during the four quarters terminating on September 30, 1959.

The witness stated that 27 freight bills were compared with the accounts receivable ledgers of the carrier. A total of 17 freight bills (Parts 1 to 17, Exhibit No. 2) indicated a rate had been assessed and collected which was less than the rates provided in Minimum Rate Tariff No. 2. Ten freight bills assessed varied rates (Parts 18 to 27, Exhibit No. 2), and the carrier's accounts ledger showed that lesser amounts had been collected than the rates quoted on the freight bills.

The Commission's rate expert explained Exhibit No. 2, and stated that the rates collected by the respondent on the transportation performed under Parts 1 to 27 are less than the minimum rates prescribed by Minimum Rate Tariff No. 2.

Position of the Respondent

An officer of the respondent corporation testified that the rate statement (Exhibit No. 2) introduced by the Commission staff was correct and that the violations charged had actually occurred.

The witness testified that about 22 of the undercharges were on transportation performed for two of the respondent's larger accounts. Respondent has no rate clerk and therefore accepted the rates quoted by these shippers. He did not check these rates because he thought they had been properly computed by a rate clerk. The witness stated that frequently the respondent charges the shipper the legal rate and the latter sends a check for a lesser amount. The shipper then threatens to hire another trucker if any attempt is made to collect the minimum rate.

Findings and Conclusions

Upon the evidence of record the Commission finds that:

Respondent is a California corporation 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. 20-761, and as a highway contract carrier pursuant to Highway Contract Carrier Permit No. 20-762.

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 and 2).

Part No.:	Freight :	Amount :	Amount :	Minimum :	Amount of :	
(Exh. 2):	Bill No.:	Date	Assessed:	Collected:	Rate	Undercharge :
1	2109	None	\$ 90.82	\$ 90.82	\$120.00	\$29.18
2	2377	5/ 7/59	41.50	41.50	108.00	66.50
3	0838	5/ 9/59	25.90	25.90	58.00	32.10
4	09653	5/12/59	106.05	106.05	123.02	16.97
5	2263	6/ 2/59	82.50	82.50	120.00	37.50
6	0789	6/11/59	201.20	201.20	281.68	80.48
7	08526	6/19/59	67.58	67.58	128.00	60.42
8	8808	6/17/59	26.00	26.00	55.00	29.00
9	09215	7/ 7/59	63.80	63.80	120.00	56.20
10	09791	7/23/59	201.93	201.93	282.00	80.07
11	09578	7/27/59	72.77	72.77	168.00	95.23
12	2266	6/ 8/59	114.79	114.79	146.24	31.45
13	09254	6/18/59	188.23	188.23	230.20	41.97
14	2217	5/21/59	137.00	137.00	158.24	21.24
15	8530	7/ 8/59	106.71	106.71	129.00	22.29
16	0835	5/ 5/59	207.47	207.47	260.39	52.92
17	2376	5/ 8/59	25.06	25.06	57.00	31.94
18	1292	5/12/59	118.55	101.62	111.74	10.12
19	2459	5/13/59	116.63	99.97	116.63	16.66
20	1588	5/13/59	72.64	80.15	90.17	10.02
21	09655	5/14/59	121.04	115.22	121.04	5.76
22	1085	5/19/59	123.64	108.30	118.36	9.56
23	1078	5/ 4/59	153.30	112.96	134.48	21.52
24	0772	5/15/59	162.05	130.72	142.15	11.37
25	1290	5/ 8/59	155.20	170.72	190.73	20.01
26	1181	5/ 4/59	162.94	140.03	159.63	19.60
27	09252	6/19/59	14.43	13.08	30.80	17.72

The total undercharges for the above shipments amount to \$927.80

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 as a highway permit carrier than the applicable minimum rates and charges required by Minimum Rate Tariff No. 2.

The Commission having found the facts as hereinabove set forth and concluding that respondent has violated Sections 3664 and 3667 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 Radial Highway Common Carrier Permit No. 20-761, and Highway Contract Carrier Permit No. 20-762 issued to R. E. Tharp, Inc., 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 it shall not lease the equipment or other facilities used in operations under this permit for a period of the suspension or directly or indirectly allow such equipment or facilities to be used to circumvent the suspension.

2. That R. E. Tharp, Inc., 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 highway contract carrier permit have been suspended by the Commission for a period of five days; that within five days after such posting R. E. Tharp, Inc., 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 R. E. Tharp, Inc., shall examine its records for the period from May 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, R. E. Tharp, Inc., shall complete the examination of its records hereinabove required by paragraph 3 and file with the Commission a report setting forth all undercharges found pursuant to that examination.

5. That R. E. Tharp, Inc., 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, R. E. Tharp, Inc., 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 R. E. Tharp, Inc., and this order shall be effective twenty days after the completion of such service upon the respondent.

Dated at San Francisco, California, this 22nd. day of November, 1960.

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