

Decision No. 61416**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 PROGRESSIVE
TRANSPORTATION CO., INC.

Case No. 6496

Phil Jacobson, for respondent.
Elinore Charles, for the Commission staff.

O P I N I O N

This is an investigation on the Commission's own motion into the operations, rates and practices of Progressive Transportation Co., Inc.

The purpose of this investigation is to determine, with respect to certain specified transportation, whether respondent:

1. Has violated 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 Minimum Rate Tariff No. 2.
2. Has violated Section 3668 of the Public Utilities Code by the use of known false weight, weighing or report of weight, thereby assisting or permitting any corporation or person to obtain transportation for property between points within this State at less than the minimum rates established by the Commission.
3. Has violated Section 3737 of the Public Utilities Code by failing to adhere to provisions and requirements in Item 255-C of Minimum Rate Tariff No. 2, governing the issuance of shipping documents.

A duly noticed public hearing was held in this matter before Examiner Donald B. Jarvis in Los Angeles on November 14, 1960.

At the hearing, the Commission staff and respondent stipulated to the facts here involved. The respondent conceded that certain violations had occurred, and, by way of extenuation and mitigation, called attention to facts which it contends establish

that these violations were not wilful. Although intent is not an element in the violations here involved, the Commission in measuring the penalty to be imposed for these violations does consider the question of wilfulness with respect to the stringency of the penalty to be assessed.

Based upon the evidence of record in this matter, the Commission makes the following findings and conclusions:

1. At all times herein mentioned respondent held, and respondent now holds, the following permits issued by this Commission:

Radial Highway Common Carrier Permit No. 19-20586, Highway Contract Carrier Permit No. 19-20587 and City Carrier Permit No. 19-41686.

2. At all times here involved respondent had been served with the Commission's Minimum Rate Tariff No. 2 and all supplements thereto as well as the Commission's Distance Table No. 4 and all supplements thereto.

3. Respondent entered into a contract with United Concrete Pipe under date of October 28, 1959, to deliver approximately 1,660 joints of pipe at rates not exceeding the minimum rate.

4. Respondent's traffic manager, at the times here involved, computed his figures on over-all estimated weight and for billing convenience established the practice of uniformly and arbitrarily billing the joints at 35,000 pounds and \$94 each.

5. Respondent, subsequent to October 28, 1959, transported 1,192 joints of 69-inch concrete pipe weighing approximately 35,000 pounds per joint at a rate of \$94 per joint. The total revenue derived from this transportation was \$112,048. Had the charges been based on the minimum rate, the revenue derived would have been \$101,976. The charge assessed by the respondent exceeds this by \$10,072.

6. Respondent, subsequent to October 28, 1959, transported 499 joints of 72-inch concrete pipe weighing approximately 48,000 pounds per joint at a rate of \$94 per joint. The total revenue

derived from this transportation was \$46,906. Had the charges been based on the minimum rate, the revenue derived would have been \$57,484. The charge assessed by the respondent is \$10,578.80 less than what would have accrued had the charges been based on the minimum rate.

7. Respondent violated 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 radial highway common carrier than the minimum charges prescribed in the Commission's Minimum Rate Tariff No. 2.

8. The charges shown in finding 5 exceed the minimum rates by \$10,072 while the charges specified in finding 6 were \$10,578.80 less than the minimum rates, resulting in total undercharges, in connection with the transportation in question, of \$506.80.

9. Respondent should be ordered to collect the undercharges hereinabove found and to examine its records from September 1, 1959, to the present time for the purpose of ascertaining whether additional undercharges exist.

10. Shortly after the job involved herein was commenced, the traffic manager referred to in finding 4 died, but the billing practice adopted at the inception of the job was continued until completion thereof. Respondent now has in its employ a competent traffic manager familiar with the rules and requirements of the Commission with respect to rates and billing, and respondent has declared its intention to adhere rigidly thereto.

11. In view of the entire record in this proceeding and the above findings thereon, the Commission concludes that respondent's operating authority should be suspended for a period of five days with the execution thereof deferred for a period of one year. If at

the end of the period of one year the Commission is satisfied that respondent is complying with the orders, rules and regulations of this Commission the suspension will be vacated without further order of this Commission. However, if the Commission finds at any time during the one-year period that respondent is failing to comply with all such orders, rules and regulations, the suspension will be imposed together with whatever additional penalty the Commission deems necessary.

O R D E R

Based upon the evidence of record in this matter,

IT IS ORDERED that:

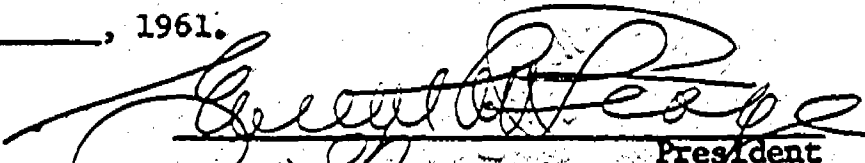
1. Radial Highway Common Carrier Permit No. 19-20586 and Highway Contract Carrier Permit No. 19-20587 issued to Progressive Transportation Co., Inc., are hereby suspended for a period of five consecutive days; provided, however, that the execution thereof is hereby deferred pending further order of this Commission. If no further order of this Commission is issued effecting said suspension within one year from the date of issuance of this decision, the suspension shall be automatically vacated.
2. Progressive Transportation Co., Inc., shall examine its records for the period from September 1, 1959, to the present time for the purpose of ascertaining if any additional undercharges have occurred other than those mentioned in this decision.
3. Within ninety days after the effective date of this decision, Progressive Transportation Co., Inc., shall complete the examination of its records required by paragraph 2 and file with the Commission a report setting forth all undercharges found pursuant to that examination.

4. Progressive Transportation Co., Inc., is hereby directed to take such 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 2 of this order, and to notify the Commission in writing upon the consummation of such collections.

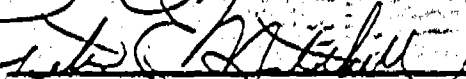
5. In the event charges to be collected as provided in paragraph 4 of this order, or any part thereof, remain uncollected one hundred twenty days after the effective date of this order, Progressive Transportation Co., Inc., shall institute legal proceedings to effect collection and shall submit to the 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 Progressive Transportation Co., Inc., and this order shall be effective twenty days after the completion of such service upon the respondent.

Dated at San Francisco, California, this 24th day of JANUARY, 1961.



President





Commissioners