

ORIGINALDecision No. 61568

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of E. G.
EASTMAN, doing business as
EASTMAN TRUCKING.

Case No. 6984

E. G. Eastman, for respondent.Elmer J. Sjostrom, for the
Commission staff.O P I N I O N

On October 4, 1960 the Commission instituted its order of investigation into the operations, rates and practices of E. G. Eastman, doing business as Eastman Trucking, who is engaged in the business of transporting property over the public highways as a radial highway common carrier and as a highway contract carrier. Pursuant to said order, public hearing was held before Examiner Martin J. Porter in San Francisco on January 4, 1961.

The purpose of the investigation was to determine whether respondent has violated Section 3667 of the Public Utilities Code by charging, demanding or receiving a lesser compensation for the transportation of property than the applicable rates prescribed in Minimum Rate Tariff No. 2.

The staff presented evidence that 103 shipments were examined for the period of November 1, 1959 to January 10, 1960, seventeen of which were selected as representative; documents and supplemental information for rating purposes were forwarded to the rate analysis unit.

A rating of these shipments disclosed undercharges in each instance, the basic cause for the undercharges being the failure of the carrier to assess off rail charges when applicable and the failure to reflect increases in rail rate when using them.

It was stipulated that the carrier had been served with applicable minimum rate tariff, distance table, and modifications and supplements thereto, applicable to the transportation herein involved.

The evidence offered by respondent was for the purpose of mitigation, there being no denial of the correctness of the staff's rating of these shipments.

Eastman's trucking terminal is in Fort Bragg, California.

Carrier has 16 pieces of equipment, employs 17 to 18 drivers, 2 mechanics and another employee to lubricate the equipment.

The carrier realized a net profit of approximately \$27,000 for the year 1960, and had a payroll of approximately \$103,000 for the same period.

Findings and Conclusions:

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 and as a highway contract carrier.
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:

<u>Freight Bill No.</u>	<u>Date</u>	<u>Charge Assessed or Collected by Respondent</u>	<u>Correct Charge</u>	<u>Under- charge</u>
895	11/10/59	\$151.43	\$193.42	\$ 41.99
913	11/11/59	361.77	388.91	27.14
928	11/14/59	139.89	166.20	26.31
899	11/16/59	208.19	233.03	24.84
929	11/16/59	149.93	177.60	27.67
836	11/17/59	158.46	180.58	22.12
914	11/17/59	157.92	184.24	26.32
917	11/21/59	318.39	329.88	11.49
951	11/30/59	190.43	217.01	26.58
953	12/ 8/59	129.60	148.39	18.79
979	12/ 9/59	161.33	189.29	27.96
980	12/11/59	131.10	154.38	23.28
939	12/11/59	96.95	163.96	67.01
990	12/29/59	201.33	231.69	30.36
1015	12/30/59	148.40	179.96	31.56
1017	1/ 5/60	100.80	161.69	60.89
1025	1/ 8/60	316.20	356.88	<u>40.68</u>

Undercharges for these shipments amounted to \$534.99

3. That in view of the evidence of record, we find the respondent violated Section 3667 of the Public Utilities Code by charging and collecting a compensation less than the prescribed minimum established by this Commission in Minimum Rate Tariff No. 2.

ORDER

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

IT IS ORDERED:

1. That Radial Highway Common Carrier Permit No. 23-368 and Highway Contract Carrier Permit No. 23-1266 issued to E. G. Eastman 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 such equipment or facilities to be used to circumvent the suspension.

2. That E. G. Eastman 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 E. G. Eastman 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 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.

4. 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.

5. 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 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, 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 E. G. Eastman and this order shall be effective twenty days after the completion of such service upon the respondent.

Dated at San Francisco, California, this 21st day of FEBRUARY, 1961.

Charles W. Page
President

John E. Mitchell

C. J. Fox

Frederick B. Holcroft
Commissioners