

He stipulated that he had been served with all requisite and applicable minimum rate tariffs and all amendments and supplements. The undercharges hereinafter set forth occurred during the first four months of 1960. According to respondent these violations were the result of his failure to employ competent rating employees. In order to remedy the situation he has employed a competent expert who will in the future handle all such matters.

The charges assessed and collected and the applicable charges established by this Commission in Minimum Rate Tariff No. 2 are as follows:

<u>Freight Bill No.</u>	<u>Date</u>	<u>Charge Assessed or Collected</u>	<u>Minimum or Correct Charge</u>	<u>Under- charge</u>
B12427	March 30, 1960	\$115.15	\$123.89	\$8.74
B12140	March 30, 1960	116.17	123.89	7.72
B12049	March 19, 1960	91.35	105.27	13.92
B12203	March 24, 1960	99.89	114.47	14.58
B13799	March 28, 1960	109.04	123.89	14.85
B12469	April 25, 1960	109.62	123.89	14.27
B12463	April 13, 1960	98.54	113.01	14.47
B11941	January 14, 1960	61.98	74.40	12.42
B14058	March 7, 1960	88.53	100.60	12.07
B12241	April 4, 1960	92.09	104.65	12.56
B12226	March 24, 1960	137.57	220.00	82.43
B12684	March 22, 1960	80.00	118.56	38.56
B11186	January 25, 1960	153.83	198.36	44.53
B14039	March 23, 1960	169.21	209.28	40.07
382	March 23, 1960	341.70	452.25	110.55
394	April 25, 1960	341.70	452.26	110.56
B12988	January 25, 1960	100.50	130.65	30.15
B12928	January 30, 1960	100.05	130.65	30.45
B13852	February 15, 1960	100.50	130.65	30.15
B12025	March 14, 1960	19.10	32.00	12.90
B14083	April 8, 1960	93.47	182.00	88.53
B12913	January 27, 1960	87.63	103.81	16.18
340	January 6, 1960	184.24	321.52	137.28
B12940)				
B12941)	March 4, 1960	166.59	211.59	45.00
B13966	February 10, 1960	37.01	76.56	39.55
B13967	February 10, 1960	53.75	74.00	20.25
			Total	992.44

Based upon the evidence of record we find and conclude that respondent Vincent J. Ganduglia violated Sections 3664 and 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. However, it is also found that respondent is transporting and will transport Borate for Pacific Coast Borax Company and that this movement of freight is a matter of vital importance in the present dry and hot condition of the State and that public safety requires the transportation of such freight to various forest and other locations. Consequently, the suspension which will be imposed upon respondent because of said violations will not apply to this movement, but the time of suspension will be fixed at twelve days instead of the usual five days to equalize the effect of the exclusion.

The application seeks authority from the Commission for Mr. Ganduglia to sell and transfer to the corporation his petroleum irregular route carrier operative rights and equipment, together with a portion of his transportation equipment and approximately \$2000 of cash, in exchange for \$20,000 par value of capital stock of Vincent Ganduglia Trucking, a corporation. Thereafter, said corporation will lease the real property and furnishings and the balance of the transportation equipment from the individual applicant.

It appears that the corporate applicant will adopt the rates of the present individual operator and will continue the same business, with the same equipment and personnel, with the addition of a competent rate man. It is proposed that the transfer be made for accounting purposes as of January 1, 1961.

On the basis of the evidence in this proceeding, we find and conclude: (1) that the transfer as proposed and subject to the conditions of the order herein will not be adverse to the public interest, (2) that there will be no change in the management or the

method of operation as a result of the transfer, (3) that there will be no change in the rates or other charges now assessed to the public, (4) that the application should be granted as herein provided, and (5) that the money, property or labor to be procured or paid for by the issue of stock herein authorized is reasonably required for the purpose specified herein and that such purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income.

The action taken herein shall not be construed to be a finding of the value of the operative rights and equipment and other assets herein authorized to be transferred. Vincent Ganduglia Trucking, a corporation, is hereby placed on notice that operative rights as such do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

A public hearing having been held, and the Commission being fully advised,

IT IS HEREBY ORDERED:

1. That Radial Highway Common Carrier Permit No. 10-2178 and Highway Contract Carrier Permit No. 10-8883 issued Vincent J. Ganduglia are hereby suspended for twelve 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; provided, however, that this order shall not prevent or be construed to prevent respondent or applicant from transporting Borate for Pacific Coast Borax Company to any part of the State.

2. That Vincent J. Ganduglia 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 his highway contract carrier permit have been suspended by the Commission for a period of twelve 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.

3. That respondent shall examine his records for the period from April 29, 1960, 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 file with 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.

7. That Vincent Ganduglia Trucking, a corporation, shall be bound by and required to comply with the above six ordering paragraphs and that should any other permits be issued to said corporation in substitution for said Permits Nos. 10-2178 and 10-8883 said orders shall likewise apply to said substitute permits; providing, however, that said corporation shall be released to the extent that compliance is effected by respondent Vincent J. Ganduglia.

8. That, after the effective date hereof and on or before January 1, 1962, Vincent J. Ganduglia may sell and transfer to Vincent Ganduglia Trucking, a corporation, the operative rights granted in Decision No. 44245 dated May 26, 1950, in Application No. 31098 and transferred to Vincent J. Ganduglia pursuant to the authority granted by Decision No. 53964, dated September 1, 1959, in Application No. 41328, together with the equipment referred to in the application; provided, however, that the authority herein granted is subject to the condition that the property withheld by applicant Vincent J. Ganduglia from transfer to said corporation is not relieved from its devotion to the public use and that its status as public utility operative property shall continue. For accounting purposes a transfer date of January 1, 1961, is authorized.

9. That on not less than five days' notice to the Commission and to the public, effective concurrently with the consummation of such transfer, applicants shall supplement or reissue the tariffs on file with the Commission naming rates, rules, and regulations governing the operations here involved, to show that Vincent J. Ganduglia has withdrawn or canceled, and Vincent Ganduglia Trucking, a corporation, has adopted or established as its own, said rates, rules, and regulations. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80.

10. That Vincent Ganduglia Trucking, a corporation, in exchange for said operative rights and equipment, and to provide working cash, may issue not to exceed 2000 shares of its \$10 par value capital stock.

11. That Vincent Ganduglia Trucking, a corporation, shall file with the Commission a report, or reports, as required by General Order No. 24-A, which order, in so far as applicable, is made a part of this order.

The Secretary of the Commission is directed to cause personal service of this order to be made upon Vincent J. Ganduglia and the effective date of this order shall be twenty days after the completion of such service upon the respondent.

Dated at San Francisco, California, this 22nd day of AUGUST, 1961.

Charles H. Rogers
President
George H. Brewer
Fredrick B. H. H. H.
Commissioners