



device, sought to obtain or obtained transportation for property at less than the minimum rates or charges established by the Commission, in violation of Section 3669 of the Public Utilities Code.

(3) Whether respondents Walter Keith Chaffee, Donald Rochlitz, Calvin O. Rice and Redding Veneer and Box Company, Incorporated, have, as highway permit carriers, charged, demanded, collected or received for the transportation of property, or for any service in connection therewith, rates or charges less than the minimum rates and charges applicable to such transportation which have been established by the Commission, in violation of Section 3667 of the Public Utilities Code.

A duly noticed public hearing was held in this matter before Examiner Donald B. Jarvis in San Francisco on May 3, 1961. The matter was submitted subject to the filing of briefs and certain late-filed exhibits. The late-filed exhibits have been received. Various extensions of time were granted in connection with filing the briefs. All of the briefs have now been filed and the matter is ready for decision.

Heron Mills, Inc., is a closely held California Corporation which was formerly named Pacific Coast Grocery Co., Inc. Pacific Coast Grocery Co., Inc., doing business under the fictitious name and style of Main Lumber Company, obtained a Radial Highway Common Carrier Permit No. 45-1221 on April 25, 1956. Subsequently, on May 5, 1959, this Permit was changed to stand in the name of Heron Mills, Inc., doing business as Main Lumber Company. At the hearing, it appeared and the Commission finds that the sole legal entity here involved is Heron Mills, Inc., a California corporation which operates its lumber, sawing, selling, and transporting business under

the fictitious name of Main Lumber Company. For clarity and simplicity this two-named entity will be in this opinion hereafter referred to usually as Heron Mills, Inc.

Heron Mills, Inc., owns and operates six tractor-trailer units. It employs, in addition to the drivers of the six units, a truck superintendent whose job is to route all shipments and to arrange for the employment of other carriers.

Heron Mills, Inc., sells lumber which it processes at its sawmill and acquires from other sources. The lumber is sold either with an "at mill" price (F.O.B. mill) in which case Heron Mills, Inc., claims that title passes to the purchaser; or on a freight and delivery basis, in which case title passes to the purchaser on delivery. If the purchaser does not pick up the lumber "at mill" it is shipped to him, or pursuant to his directions, by a for-hire carrier. Although the purchaser may designate the carrier, in most cases by default it is Heron Mills, Inc. It is assumed, for the purposes of this proceeding only, that the purchaser pays Heron Mills, Inc., for this transportation charges equal to or exceeding those prescribed by the Commission in Minimum Rate Tariff No. 2. The price of the lumber to the purchaser is claimed by Heron Mills, Inc., to be the same whether the purchaser picks it up in his own equipment or whether it is transported by a for-hire carrier. When lumber is sold on a freight and delivery basis, the purchaser pays an amount which is made up of the market price for the lumber and a freight transportation charge.

For the purposes of this proceeding, the Commission staff used the test period of June, 1959, to which the production of evidence was primarily directed.

During June of 1959, Heron Mills, Inc., transported 112 shipments of lumber. Forty shipments were transported on Heron Mills, Inc.'s own equipment. Seventy-two shipments were transported by other permitted carriers alleged to be subhaulers.

The staff concedes that the shipments transported by Heron Mills, Inc., on its own equipment do not violate any statute or regulation of this Commission. The staff contends, however, that the shipments transported by alleged subhaulers constitute a device by which Heron Mills, Inc., obtains or permits or assists someone to obtain transportation at less than the minimum rates established by this Commission. The staff contends further that the alleged subhaulers are, in reality, prime carriers and that to the extent they received from Heron Mills, Inc., less than the minimum rates established by this Commission for such transportation, the alleged subhaulers have violated the Public Utilities Code by charging less than the minimum rates established by this Commission for such transportation. The staff asks that the Commission order Heron Mills, Inc., to pay to its alleged subhaulers the difference between the rate set forth in Minimum Rate Tariff No. 2 (which was collected as transportation charges) and the amount actually paid to the alleged subhaulers.

Respondent Heron Mills, Inc., maintains that when lumber is sold "at mill" title passes on sale to the purchaser who thereby becomes a shipper and that Heron Mills, Inc., or Heron Mills, Inc., by its fictitious name (the Main Lumber Company), transports lumber for the shipper as a for-hire carrier and that it may employ a subhauler in these circumstances at less than minimum rates. Respondent Heron Mills, Inc., claims that it may keep and enjoy the

differential between the minimum rate which it receives from the purchaser and the lesser amount (approximately 25% less than the minimum rates (Exhibit No. 9)), which it pays the alleged subhauler. Said respondent's position is that no provision of law prohibits this practice.

The Interstate Commerce Commission in its early decisions, with the approval of the United States Supreme Court, clearly recognized in the "Buy and Sell" and other "device" cases that the incidence of title was not determinative of a carrier's status. This Commission has done likewise. In this case which we regard in economic essence, ignoring irrelevant legal concepts, we find that respondent Heron Mills, Inc., used its Radial Highway Common Carrier Permit and alleged subhaulers as a device to obtain transportation of lumber at less than minimum rates in violation of Sections 3668 and 3669 of the Public Utilities Code. We find this both for sales "at mill" and sales on a freight and delivery basis where so-called subhaulers were allegedly employed. We distinguish these two types of sales only because of a mitigating factor. Respondent Heron Mill's testimony indicates that a Commission employee advised said respondent that it could legally sell lumber "at mill" and employ subhaulers to haul such lumber for less than the minimum rate. For this reason, the Commission will act prospectively only on such transactions. There was no such defense or mitigating consideration for sales delivered by alleged subhaulers on a freight and delivery basis.

That it was not proved that respondent Heron Mills, Inc., varied the price of lumber for sales "at mill" vis-a-vis "sales on a freight and delivery basis" on the tested transactions is not controlling. Such a variation could readily be made in this situation. Further, this respondent recognized that saving

approximately one-fourth (Exhibit 9) less than minimum rates on transportation "was a large or considerable portion of their economic thinking, their economic planning for this type of an arrangement or operation."

The present case is governed by a recent decision of this Commission. In Decision No. 63227, in Case No. 6567, entitled "Investigation on the Commission's own motion into the operations, practices, rates, charges and contracts of J. & V. Trucking Company, a corporation, dated February 6, 1962, the Commission held as follows: "From the standpoint of enforcing minimum rates it is not necessary, in our judgment, that it be shown that a particular transaction has resulted in that which the statute condemns but only that the transaction be reasonably susceptible of resulting in the evil sought to be avoided. Accordingly, in issuing operating permits, where it appears that there is an affiliation between carrier and shipper by reason of common ownership, management or control, it has been the Commission's policy to specify in such permits that not less than the applicable minimum rates shall be paid by such carrier to subhaulers engaged to carry the property of the affiliated shipper. In the circumstances, it is found and concluded that regulatory objectives will be achieved by imposing a similar requirement herein."

When Heron Mills, Inc., uses an alleged subhauler to transport lumber to which it allegedly has title and pays the subhauler an amount less than the charges set forth in the Commission's Minimum Rate Tariff No. 2, Heron Mills, Inc., has clearly violated Sections 3668 and 3669 of the Public Utilities Code. It violates Section 3668 because in its capacity of a highway permit carrier it has, by means of a device, permitted itself to obtain transportation of lumber at less than minimum rates established by this Commission

and the Commission so finds. In like manner, we find that Section 3669 has been violated because Heron Mills, Inc., in its capacity as the shipper of lumber, has secured transportation at less than minimum rates.

In those instances where the alleged title has passed to the purchaser and Heron Mills, Inc., employs another carrier to perform the transportation of the lumber at less than minimum rates, this Commission finds also for the same reasons that Heron Mills, Inc., has by this device, violated Sections 3668 and 3669 of the Public Utilities Code.

The Commission finds that to the extent that respondents Chaffee, Rochlitz, Rice and Redding Veneer and Box Company, Incorporated, have transported shipments of lumber owned by Heron Mills, Inc., as alleged subhaulers and received as compensation an amount less than the minimum rates established by this Commission, they have violated Section 3667 of the Public Utilities Code.

The Commission finds and concludes, in addition to the findings heretofore made, as follows:

1.(a) At all times herein mentioned Heron Mills, Inc., a corporation, doing business as Main Lumber Company, has held, and it now holds, Radial Highway Common Carrier Permit No. 45-1221;

(b) At all times here concerned Heron Mills, Inc., a corporation, doing business as Main Lumber Company, 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;

2. Heron Mills, Inc., a corporation, doing business as Main Lumber Company, has by means of a device, assisted, suffered and

permitted a corporation (itself) to obtain transportation for property between points in this State at rates less than the minimum rates established or approved by this Commission, in violation of Section 3668 of the Public Utilities Code;

3. Heron Mills, Inc., a corporation, doing business as Main Lumber Company, has by means of a device, obtained the transportation of property at less than the minimum rates established or approved by this Commission, in violation of Section 3669 of the Public Utilities Code;

4.(a) At all times herein mentioned Walter Keith Chaffee held, and he now holds, Radial Highway Common Carrier Permit No. 39-4957;

(b) At all times here involved Walter Keith Chaffee 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;

(c) Walter Keith Chaffee has violated Section 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 rates specified in the Commission's Minimum Rate Tariff No. 2;

5.(a) At all times herein mentioned Donald Rochlitz held, and he now holds, Radial Highway Common Carrier Permit No. 45-741;

(b) At all times here involved Donald Rochlitz 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;

(c) Donald Rochlitz has violated Section 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 rates specified in the Commission's Minimum Rate Tariff No. 2;

6.(a) At all times herein mentioned Calvin O. Rice held, and he now holds, Radial Highway Common Carrier Permit No. 45-937;

(b) At all times here involved Calvin O. Rice 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;

(c) Calvin O. Rice has violated Section 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 rates specified in the Commission's Minimum Rate Tariff No. 2;

7.(a) At all times herein mentioned Redding Veneer and Box Company, Inc., held, and it now holds, Radial Highway Common Carrier Permit No. 45-1282;

(b) At all times here involved Redding Veneer and Box Company, Inc., 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;

(c) Redding Veneer and Box Company, Inc., has violated Section 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 rates specified in the Commission's Minimum Rate Tariff No. 2.

8. Heron Mills, Inc., doing business as Main Lumber Company, should be ordered to review its records from February 1, 1961 to the present time and ascertain all shipments transported by alleged

subhaulers wherein title to the lumber transported was allegedly in Heron Mills, Inc. When said shipments have been ascertained, Heron Mills, Inc., should remit to these alleged subhaulers who performed said transportation the difference between the amount paid to each of the alleged subhaulers and the appropriate charge required by Minimum Rate Tariff No. 2.

9. Heron Mills, Inc., doing business as Main Lumber Company, should be required to keep accurate records, including supporting documents, which indicate clearly the employment of other carriers and the payments made to said carriers and the minimum tariff rates for said hauls.

10. Walter Keith Chaffee, Donald Rochlitz, Calvin O. Rice and Redding Veneer and Box Company, Incorporated, should be ordered to review their records from February 1, 1961, to the present time and ascertain all shipments transported by them for Heron Mills, Inc., doing business as Main Lumber Company, where the transportation was for the account of Heron Mills, Inc., doing business as Main Lumber Company, and where title to the lumber transported was allegedly in Heron Mills, Inc., doing business as Main Lumber Company. When said shipments have been ascertained, said respondents should be ordered to collect from Heron Mills, Inc., doing business as Main Lumber Company, the difference between the amounts actually received by them for such transportation and the charges required by the Commission's Minimum Rate Tariff No. 2.

O R D E R

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

IT IS ORDERED that:

1. Heron Mills, Inc., a corporation, doing business as Main Lumber Company, shall review its records from February 1, 1961, to the present time and ascertain all shipments transported by alleged subhaulers wherein title to the lumber transported was allegedly in Heron Mills, Inc. When said shipments have been ascertained, Heron Mills, Inc., shall remit to each of the alleged subhaulers who performed such transportation the difference between the amount paid to each for transportation and the appropriate charge required by Minimum Rate Tariff No. 2. With respect to such shipments by other carriers said respondent is ordered to cease and desist paying such carriers at less than minimum rates. Said respondent is ordered to pay such carriers the prescribed minimum rates and to keep records to establish such payments.

2. Within ninety days after the effective date of this decision, Heron Mills, Inc., doing business as Main Lumber Company, shall complete the examination of its records and make the payments hereinabove required by paragraph 1 and file with the Commission a report of the results of the examination of its records and the payments made.

3. Heron Mills, Inc., doing business as Main Lumber Company, is ordered to keep complete and accurate records, including supporting documents, which indicate clearly the employment of other carriers, the payments made to such carriers and the minimum tariff rates for the transportation involved.

4. Walter Keith Chaffee, Donald Rochlitz, Calvin O. Rice and Redding Veneer and Box Company, Incorporated, are ordered to review

their records from February 1, 1961, to the present time and ascertain all shipments transported by them for Heron Mills, Inc., doing business as Main Lumber Company, where the transportation was for the account of Heron Mills, Inc., doing business as Main Lumber Company, and where title to the lumber transported was allegedly in Heron Mills, Inc., doing business as Main Lumber Company.

5. Within ninety days after the effective date of this decision, Walter Keith Chaffee, Donald Rochlitz, Calvin O. Rice and Redding Veneer and Box Company, Incorporated, shall complete the examination of their records hereinabove required by paragraph 4 and file with the Commission a report setting forth such transportation, the amount actually received for such transportation, and the charges established by the Commission's Minimum Rate Tariff No. 2 for such transportation.

6. Walter Keith Chaffee, Donald Rochlitz, Calvin O. Rice and Redding Veneer and Box Company, Incorporated, are hereby directed to take such action, including legal action, as may be necessary to collect the difference between the amounts actually received for transportation and the charges established by the Commission's Minimum Rate Tariff No. 2, as ascertained pursuant to paragraph 5 of this order.

7. In the event charges to be collected as provided in paragraph 6 of this order, or any part thereof, remain uncollected one hundred twenty days after the effective date of this order, Walter Keith Chaffee, Donald Rochlitz, Calvin O. Rice and Redding Veneer and Box Company, Incorporated, shall institute legal proceedings to effect collection and shall submit to the Commission on the first Monday of each month, a report of the remaining amount to be collected and specifying the action taken to collect such amount and the result of such, until such charges have been collected in full or until further order of this Commission.

8. With respect to the employment of other carriers where allegedly title has passed at the mill, respondent Heron Mills, Inc., doing business as Main Lumber Company, is ordered to cease and desist paying such carriers at less than minimum rates. Said respondent, beginning with the effective date of this order, is ordered to pay such carriers the prescribed minimum rates and to keep records to establish such payments.

9. On the effective date of this decision, the Secretary of the Commission is directed to cause Radial Highway Common Carrier Permit No. 45-1221, dated May 5, 1959, which was transferred from Pacific Coast Grocery Co., Inc., doing business as Main Lumber Company, P. O. Box 679 at 2375 Garden Avenue, Redding, California, to be amended by inserting therein a requirement that whenever permittee engages another carrier for the transportation of lumber sold by or to be delivered for said Heron Mills, Inc., doing business as Main Lumber Company, permittee shall pay such other carrier not less than the minimum rates and charges established by the Commission for the transportation actually performed by such other carrier.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 3rd day of APRIL, 1962.

Walter A. Ragsdale  
President

E. J. [unclear]

George E. [unclear]

Fredrick B. Halbach

Commissioners