

ORIGINALDecision No. 63576

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates, and practices of Rabb Bros.
Trucking, Inc. }

Case No. 7264

Evans, Schroeder and Campbell by Truman F.
Campbell, for respondent.
Sheldon Rosenthal, for the Commission staff.

O P I N I O N

On January 9, 1962, the Commission instituted its investigation into the operations, rates and practices of Rabb Bros. Trucking, Inc. Respondent is engaged in the business of transporting property over the public highways as a radial highway common carrier.

Pursuant to the Order Instituting Investigation, public hearing was held before Examiner Martin J. Porter on February 28, 1962, at Fresno, on which date the matter was submitted.

The purpose of this investigation is to determine whether respondent, in violation of Sections 3664, 3667 and 3737 of the Public Utilities Code, has charged, demanded or received a lesser compensation for the transportation of property than the applicable charges prescribed in Minimum Rate Tariff No. 2 and supplements thereto.

Facts

The Commission staff presented evidence that a review period of November 1, 1960, to April 30, 1961, was selected. Twenty-seven freight bills and supporting documents were selected

and forwarded to the Rate Analysis Unit. There were approximately 134 shipments similar to those selected.

The rating of the 27 shipments selected disclosed undercharges in each instance. The causes of the undercharges were (1) failure to apply the rate as provided in Minimum Rate Tariff No. 2 for the commodity transported, (2) failure to use constructive mileage for rating purposes as set forth in Distance Table No. 4, (3) failure to have proper documentation before applying the rate offered under "multiple lots" rules of Minimum Rate Tariff No. 2.

The defense of the respondent was (1) that it thought the commodity transported was a free or exempt commodity and respondent applied the rate its competitors charged; (2) that respondent used actual mileages rather than constructive mileage provided in Distance Table No. 4 as shippers would not pay more for transportation than the actual miles traversed; (3) that while the documentation of the multiple lot shipment was not as prescribed by the Commission in Minimum Rate Tariff No. 2, it was the intent of the parties that these shipments be multiple lot shipments.

It was stipulated that Rabb Bros. Trucking, Inc., holds Radial Highway Common Carrier Permit No. 10-7594 and that it has been served with Minimum Rate Tariff No. 2, Distance Table No. 4 and applicable supplements thereto.

Findings and Conclusions

Based upon the evidence of record, we hereby find and conclude that:

1. Respondent is engaged in the transportation of property over the public highways for compensation as a radial highway common carrier.

2. 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>Frt. Bill No.</u>	<u>Date</u>	<u>Charge Assessed or Collected by Respondent</u>	<u>Correct Charge</u>	<u>Undercharge</u>
04005	2-9-61	\$ 187.28	\$257.51	\$70.23
04067	2-12-61	204.09	246.11	60.02
04002	2-12-61	194.27	251.40	57.13
04066	2-14-61	185.68	227.46	41.78
04163	3-3-61	184.48	230.60	46.12
04184	3-8-61	185.12	231.15	46.03
04193	3-10-61	192.72	240.90	48.18
04332	4-7-61	190.64	238.30	47.66
04341	4-9-61	185.35	262.38	76.53
04333	4-10-61	192.72	272.22	79.50
04342	4-12-61	197.92	279.42	81.50
04376	4-26-61	180.42	224.85	44.37
03560	12-5-60	67.15	96.70	29.55
03566	12-7-60	68.25	98.28	30.03
03586	12-10-60	90.37	113.61	23.24
03587	12-12-60	93.03	116.95	23.92
03626	12-16-60	89.83	118.06	28.23
04253	3-24-61	180.00	194.65	14.65
04256	3-28-61	185.47	200.62	15.15
04254	3-27-61	183.24	193.28	15.04
04287	3-30-61	170.20	194.81	24.61
04289	3-28-61	173.84	193.94	25.10
04283	3-31-61	171.97	196.72	24.75
04126	2-27-61	182.12	196.52	14.40
04127	2-27-61	179.10	193.32	14.22
04141	2-28-61	184.03	193.82	14.79
3919	1-19-61	126.65	187.44	60.79

Undercharges for these shipments amounted to \$1,057.52

3. Respondent violated Sections 3664, 3667 and 3737 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.

4. By Decision No. 58303 dated April 21, 1959, it was pointed out "that the respondent and its employees were not familiar with the pertinent regulatory rules controlling many facets of the

carrier's operations, especially with respect to the use of documents under multiple-lot pickups and the application of constructive mileage." The respondent has not corrected the deficiency in its operations pointed out by this Commission in Decision No. 58303.

O R D E R

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

IT IS ORDERED that:

1. Respondent shall cease and desist from charging, demanding, collecting or receiving a lesser compensation for the transportation of property than the applicable charges prescribed in the Commission's Minimum Rate Tariff No. 2 and from any and all other violations of said tariff.
2. Radial Highway Common Carrier Permit No. 10-7594 issued to Rabb Bros. Trucking, Inc., is hereby suspended for ten consecutive days starting at 12:01 a.m. on the second Monday following the effective date of this order. Respondent shall not lease the equipment or other facilities used in operations under this permit for the period of the suspension or directly or indirectly allow such equipment or facilities to be used to circumvent the suspension.
3. Respondent shall post at its terminal and station facilities used for receiving property from the public for transportation, not less than ten days prior to the beginning of the suspension period, a notice to the public stating that its radial highway common carrier permit has been suspended by the Commission for a period of ten days. 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.

4. Respondent shall examine its records for the period from November 1, 1960, to the present time, for the purpose of ascertaining all undercharges that have occurred.

5. Within ninety days after the effective date of this decision, respondent shall complete the examination of its records required by paragraph 4 of this order and shall file with the Commission a report setting forth all undercharges found pursuant to that examination.

6. Respondent shall take such action, including legal action, as may be necessary to collect the amounts of undercharges found after the examination required by paragraph 4 of this order, and shall notify the Commission in writing upon the consummation of such collections.

7. In the event undercharges ordered to be collected by paragraph 6 of this order, or any part of such undercharges, remain uncollected one hundred twenty days after the effective date of this order, respondent shall file with the Commission, on the first Monday of each month thereafter, a report of the undercharges remaining to be collected and specifying the action taken to collect such undercharges and the result of such action,

until such undercharges 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 respondent. The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 17th day of APRIL, 1962.

John E. [Signature] President
[Signature]
George W. Hoover
Fredrick B. Hallock Commissioners

Commissioner Everett C. McKeage, being necessarily absent, did not participate in the disposition of this proceeding.