

ORIGINAL

Decision No. 63695

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations, rates charges and practices of KENNETH A. EVANS, doing business as KENNETH A. EVANS TRUCKING.

Case No. 7168

Kenneth A. Evans, in propria persona.
Bernard F. Cummins, for the Commission staff.

O P I N I O N

This proceeding, instituted by the Commission on its own motion, pertains to the operations, rates and practices of Kenneth A. Evans, doing business as Kenneth A. Evans Trucking, operating as a radial highway common carrier pursuant to permit No. 19-42269, issued September 18, 1950, and a city carrier permit No. 19-42270, issued to him on September 26, 1950.

A public hearing was held in Los Angeles on December 15, 1961, before Examiner Robert D. DeWolf, to determine whether or not said Kenneth A. Evans, hereinafter referred to as respondent, violated Sections 3664, 3667 and 3737 of the Public Utilities Code of this State by charging, demanding, collecting or receiving lesser compensation for the transportation of property than the applicable charges prescribed by Minimum Rate Tariff No. 2 and by failing to adhere to the provisions and conditions set forth in said tariff, all as more specifically set forth in the said order instituting investigation. The matter was submitted subject to the filing of

late-filed exhibits as requested by respondent and a map and exhibits by the Commission staff on or before February 1, 1962, which are now on file.

In the letter enclosing respondent's late-filed exhibit respondent states that the undercharges set forth in Parts 6 through 10, 12 and 23 have been billed and collected or the party has agreed to pay or, in one case, has become bankrupt. Respondent claimed that the urea hauled is exempt from the rates in Minimum Rate Tariff No. 2. Respondent stipulated that he had received a copy of Minimum Rate Tariff No. 2 and Distance Table No. 4 and supplements.

Evidence Submitted by the Commission Staff

A Commission staff witness testified that he checked 600 freight bills of respondent issued from June, 1960 through November, 1960, and discovered twenty-six shipments involving undercharges. Copies of these freight bills are set forth in Exhibit No. 1.

By Exhibit No. 2 entitled "Official Notice of Freight Bill/ Unit Measurement Violations", dated May 22, 1958, a copy of which was received by respondent, respondent was warned against future violations of Minimum Rate Tariff No. 2.

A Commission staff witness testified that urea, under the generic term of fertilizer, is exempt from the rates in Minimum Rate Tariff No. 2, but that the above commodity was, not in fact a fertilizer, but an additive for animal feed and therefore not exempt. As to Parts 2 and 11 of Exhibit No. 3, no evidence from the shipper was

produced to show a billing different from the one stated on the bills in evidence.

Parts 12 through 22, 24, 25 and 26 of Exhibit No. 3 all were shipments to a subdivision under construction and the Commission staff submitted a late-filed exhibit which was a map and plat showing the location of the shipping of these items to be well within Zone 2 as it is shown in Exhibit No. 7.

The Commission transportation representative testified that he could not locate billing statements showing payment for the shipments in Parts 24, 25 and 26 and the amounts set forth are still due, owing and unpaid as follows: Part 24, \$77.65; Part 25, \$32.63; and Part 26, \$77.54; making a total sum of \$187.82 in addition to the undercharges set forth below.

Exhibit No. 3, which was introduced into evidence through the testimony of a Commission staff rate expert, shows that respondent assessed and collected charges less than the applicable minimum charges prescribed in Minimum Rate Tariff No. 2 which resulted in undercharges. Said Exhibit No. 3 is in error as to Parts 1, 3, 4 and 5, in which the minimum rates for Adco Brand Urea were computed, based on a third class rating. The record shows that this is a feed supplement and was consigned and delivered for feeding purposes and a fourth class rating is applicable. Therefore, the corrected undercharges which resulted are as follows:

<u>Respondent's Freight Bill Number</u>	<u>Date</u>	<u>Amount of Undercharges</u>
None shown	June 13, 1960	\$ 64.40
5486	June 23, 1960	28.00
00377	June 27, 1960	26.40
00378	June 27, 1960	62.00
00380	June 27, 1960	48.00
4890	August 22, 1960	94.46
7772	August 31, 1960	48.78
7774	August 31, 1960	29.40
5379	September 1, 1960	28.00
None shown	September 19, 1960	75.37
7640	October 14, 1960	12.00
7639	October 14, 1960	20.00
7646	October 20, 1960	9.60
7644	October 20, 1960	8.00
7649	October 25, 1960	44.99
7802	October 26, 1960	47.44
7957	October 26, 1960	22.79
7958	October 26, 1960	10.65
7960	October 28, 1960	8.68
9202	October 31, 1960	4.39
9206	November 1, 1960	9.53
9207	November 2, 1960	9.12
9215	November 16, 1960	16.14
7642	October 13, 1960	9.71
9205	October 31, 1960	28.55
9203	October 31, 1960	9.69
		<u>\$ 776.09</u>

Evidence of Respondent

Respondent testified that he was uncertain as to zone boundaries as to certain portions of the charges and conceded that certain violations had occurred, and, by way of mitigation, stated that he had incorrectly considered the rules of multiple-lot shipments and other errors were made in rate calculations, but he contended that these violations were not wilful and requested time to furnish a late-filed exhibit to show statements from the shippers as to certain items in Exhibit No. 1.

Findings and Conclusions

Upon the evidence of record the Commission finds:

1. That all applicable minimum rate orders were served upon respondent prior to the undercharges above set forth.

2. That the commodity designated on the freight bills of respondent as Adco Brand Urea is not a fertilizer but is an animal food supplement and the fourth class rating is applicable; that the lumber hauled by respondent, as set forth in a portion of Parts 12 to 26 of Exhibit No. 3, was consigned to a destination in Zone 2 which is located on the map of Exhibit No. 7.

3. That respondent assessed and collected charges less than the applicable minimum charges prescribed in Minimum Rate Tariff No. 2 which resulted in undercharges in the total amount of \$776.09, as above set forth, and the total amount of freight charges due under bills set forth in Parts 24, 25 and 26 is due and unpaid in the total amount of \$187.82, plus the undercharges.

4. That in the performance of various transportation services hereinabove set forth, and as more particularly appearing in Exhibits Nos. 1 and 3 of the record herein, respondent has violated or failed to comply with the provisions of Minimum Rate Tariff No. 2.

5. That 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 three days.

The Commission having found facts as hereinabove set forth, and concluding that respondent Kenneth A. Evans has violated Sections 3664, 3667 and 3737 of the Public Utilities Code and the provisions and requirements of Minimum Rate Tariff No. 2 by charging, demanding, collecting or receiving a lesser compensation for the transportation of property as a permit carrier than the minimum charges prescribed in the Commission's Minimum Rate Tariff No. 2, makes its order as follows:

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. 19-42269 and city carrier permit No. 19-42270, issued to Kenneth A. Evans, doing business as Kenneth A. Evans' Trucking, are hereby suspended for a period of three consecutive days commencing at 12:01 a.m. on the second Monday after the effective date of this order; and he shall not lease the equipment used in the operation under these permits for the period of the suspension or directly or indirectly allow such equipment to be used to circumvent the suspension.

2. Respondent Kenneth A. Evans shall post at his place of business 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 city carrier permit have been suspended by the Commission for a period of three days, and 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. Kenneth A. Evans, doing business as Kenneth A. Evans Trucking, shall examine his records for the period from January 1, 1961, to the present time for the purpose of ascertaining if any additional undercharges have occurred other than those mentioned in this decision.

4. Within ninety days after the effective date of this decision, Kenneth A. Evans, doing business as Kenneth A. Evans Trucking, shall complete the examination of his records required by paragraph 3, and file with the Commission a report setting forth all undercharges found pursuant to that examination.

5. Kenneth A. Evans, doing business as Kenneth A. Evans Trucking, 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 3 of this order, and to notify the Commission in writing upon the consummation of such collections.

6. In the event charges to be collected as provided for in paragraph 5 of this order, or any part thereof, remain uncollected one hundred twenty days after the effective date of this order, Kenneth A. Evans, doing business as Kenneth A. Evans Trucking, 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 Kenneth A. Evans, doing business as Kenneth A. Evans Trucking, and this order shall be effective twenty days after the completion of such service upon the respondent.

Dated at San Francisco, California,
this 14th day of MAY, 1962.

Cecil W. Deane
President
D. L. ...
E. J. Fox
George H. ...
Fredrick B. Hallock
Commissioners