

ORIGINALDecision No. 63749

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of GEORGE L.
VARGAS, dba VARGAS TRUCKING CO.

Case No. 7269

E. H. Griffiths, for respondent.
Walter G. Linstedt, for Commission staff.

O P I N I O N

On January 23, 1962, the Commission instituted its investigation into the operations, rates and practices of George L. Vargas, doing business as Vargas Trucking Co.

Pursuant to the order instituting investigation, public hearing was held before Examiner Martin J. Porter on April 11, 1962 at San Francisco, 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 and 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 March 1, 1961 to July 26, 1961 was selected. Thirty-five freight bills and supporting documents were selected and forwarded to the Rate Analysis Unit. The field representative established points of origin and destination for these shipments.

The rating of the 35 shipments selected showed undercharges in each instance. The causes of the undercharges were (1) improper classification of the commodity transported (2) failure to use constructive miles for rating purposes as provided in Minimum Rate Tariff No. 2 and Distance Table No. 4 and (3) failure to assess applicable rates provided in Minimum Rate Tariff No. 2.

The defense of the respondent was (1) that the commodity classification was supplied him by the shipper (2) he did not use Minimum Rate Tariff No. 2 and Distance Table No. 4 because he thought the pickups and deliveries were from Sacramento to North Sacramento and therefore minimum rates did not apply.

It was stipulated that George L. Vargas holds Radial Highway Common Carrier Permit No. 34-2271, Highway Contract Carrier Permit No. 34-3350 and City Carrier Permit No. 34-3836 and that he was served with Minimum Rate Tariff No. 2, Distance Table No. 4 and the 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 highway permit 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>Freight Bill No.</u>	<u>Date</u>	<u>Charge Assessed Or Collected By Respondent</u>	<u>Correct Charge</u>	<u>Under Charge</u>
12636	4-21-61	69.68	86.40	16.72
12084	3- 1-61	58.13	65.27	7.14
13212	6-13-61	57.00	64.00	7.00
12711	4-25-61	30.00	34.00	4.00
12612	4-20-61	19.75	30.00	10.25
12485	4- 6-61	20.00	30.00	10.00
12534	4-12-61	21.95	33.48	11.53
13079	5-31-61	20.00	30.00	10.00
12119	3- 6-61	20.00	30.00	10.00
12323	3-22-61	21.01	31.99	10.98
13211	6-14-61	29.00	34.00	5.00
12870	5-10-61	20.00	30.00	10.00
13582	7-26-61	19.75	30.00	10.25
12239	3-15-61	20.00	30.00	10.00
13509	7-19-61	19.00	30.00	11.00
13005	5-23-61	20.00	27.60	7.60
12037	3- 1-61	20.15	30.24	10.09
12382	3-28-61	30.00	34.00	4.00
13348	6-27-61	19.00	30.00	11.00
13280	6-21-61	20.00	30.00	10.00
12950	5-17-61	19.75	30.00	10.25
13148	6- 8-61	19.00	30.00	11.00
13432	7-12-61	29.00	34.00	5.00
12783	5- 3-61	20.00	30.00	10.00
13268	6-19-61	29.00	32.00	3.00
12123	3- 7-61	30.45	33.60	3.15
13503	7-17-61	29.00	32.00	3.00
12379	3-28-61	29.00	32.00	3.00
13269	6-20-61	21.59	31.76	10.17
13078	5-31-61	29.00	32.00	3.00
12226	3-14-61	25.80	32.00	6.20
12515	4-10-61	19.75	29.00	9.25
12936	5-16-61	29.00	32.00	3.00
13567	7-25-61	22.70	32.00	9.30
12708	4-25-61	29.00	32.00	3.00

Undercharges for these shipments amounted to \$278.88

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. Respondent's permits should be suspended for a period of five consecutive days, or, in the alternative, he should be required to pay a fine of \$1,000.

O R D E R

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

IT IS ORDERED that:

1. If, on or before the fortieth day after personal service of this order upon respondent, respondent has not paid the fine referred to in paragraph 3 of this order, then Radial Highway Common Carrier Permit No. 34-2271, Highway Contract Carrier Permit No. 34-3350, and City Carrier Permit No. 34-3836 issued to George L. Vargas shall be suspended for five consecutive days, starting at 12:01 a.m. on the second Monday following the fortieth day after such personal service.

2. In the event of such suspension, respondent shall not lease the equipment or other facilities used in operations under said permits and certificate for the period of the suspension, or directly or indirectly allow such equipment or facilities to be used to circumvent the suspension; respondent 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, city carrier and contract carrier permits have been suspended by the Commission for a period of five days; within five days after such posting he shall file with the Commission a copy of such notice, together with an affidavit setting forth the date and place of posting thereof.

3. As an alternative to the suspension of operating rights imposed by paragraph 1 of this order, respondent may pay a fine of \$1,000.00 to this Commission on or before the fortieth day after personal service of this order upon respondent.

4. Respondent shall examine his records for the period from March 1, 1961, to the present time, for the purpose of ascertaining if any undercharges have occurred other than those mentioned in Finding No. 2 of this decision.

5. Within ninety days after the effective date of this decision, respondent shall complete the examination of his records hereinabove required by Ordering Paragraph 4 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 set forth in the preceding opinion, together with any additional 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 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, respondent shall institute legal proceedings 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.

The Secretary of the Commission is directed to cause personal service of this order to be made upon George L. Vargas. The

effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 28th
day of May, 1962.

Wesley B. Page
President

John L. Marshall

E. L. Fox

George J. Grover

Frederick B. Hobbs
Commissioners