

ORIGINAL

Decision No. 63785

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the operations, rates,  
and practices of JOE CUNHA, doing  
business as Cunha Transportation  
Company.

Case No. 7035

Marvin Handler of Handler and  
Baker, for respondent.  
Elinore Charles, for the  
Commission staff.

O P I N I O N

Order of Investigation

On December 13, 1960, the Commission instituted its order of investigation into the operations, rates, and practices of Joe Cunha, doing business as Cunha Transportation Company, a radial highway common carrier, highway contract carrier, and city carrier, for the purpose of determining:

1. Whether respondent has acted in violation of Sections 3664 and 3667 of the Public Utilities Code by charging, demanding and collecting or receiving a lesser compensation for the transportation of property than the applicable charges prescribed in Minimum Rate Tariff No. 2 and Minimum Rate Tariff No. 8.

2. The order which should be issued by this Commission in the event it be found that any of the alleged violations has occurred.

Public Hearing

Pursuant to the order of investigation, a public hearing was held in San Francisco before Examiner Edward G. Fraser on

April 10, 1961, and the matter was taken under submission at the close of the hearing.

Stipulations

It was stipulated that respondent holds, and operates under, Radial Highway Common Carrier Permit No. 1-234, Highway Contract Carrier Permit No. 1-1832, and City Carrier Permit No. 1-7503; that respondent has received copies of Minimum Rate Tariffs Nos. 2 and 8 and Distance Table No. 4 and also has received all of the supplements to said tariffs and distance table.

It was further stipulated that the rate statement of the staff was correct and that it might be accepted into evidence as Exhibit 2.

Evidence Presented by the Staff

A representative of the Transportation Division of the Commission testified that he had made an investigation of the freight bills and other records of the respondent covering operations performed during the period from June to November, 1959. The witness had checked 1,200 freight bills and made copies of 17, which had been forwarded to the Rate Analysis Unit of the Commission for further study.

The Commission's rate expert identified his rate statement, which was accepted into evidence as Exhibit 2. He then testified that the rates collected by respondent for the transportation referred to under Parts 1 through 17 of Exhibit 2 are less than the minimum rates prescribed by Minimum Rate Tariffs Nos. 2 and 8.

Position of the Respondent

A traffic consultant testified that he does most of the rating for respondent; that the latter employs a full time rate

clerk at his Hayward and Los Angeles terminals; that these men are competent and were hired to ensure that proper rates would be charged; that the rating on the undercharges alleged by the staff was done by the two rate clerks; and that one of the raters has left the employment of respondent. Evidence was introduced to explain that the clerk from the Los Angeles terminal was not available to testify due to a series of severe heart attacks.

The traffic consultant testified that the undercharges seemed to be due to the improper reading of a tariff page in at least four counts; to a failure to add the necessary surcharge on several; to very poor freight bills which did not have sufficient information to enable the clerks to select the proper rate; and, finally, to the extreme difficulty of obtaining accurate information as to whether a consignee is on or off rail.

Respondent's wife testified that all customers have been rebilled at the corrected rate; that the only opposition encountered is on the loading and unloading charge referred to in Part 2 of Exhibits 1 and 2, which is a charge payable by the consignor; that the load involved was pipe, which is always handled by powered equipment; and that the clerk making out the freight bill neglected to apply the "Power loaded and unloaded" stamp. If this notation had been made, the extra loading and unloading charge would not have been due.

#### Findings and Conclusions

Upon the evidence of record the Commission finds and concludes that:

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

common carrier pursuant to Radial Highway Common Carrier Permit No. 1-234; as a highway contract carrier pursuant to Highway Contract Carrier Permit No. 1-1832; and as a city carrier pursuant to City Carrier Permit No. 1-7503.

2. Respondent has assessed and collected charges less than the applicable charges established by this Commission in Minimum Rate Tariffs Nos. 2 and 8, with resulting undercharges as follows:

<u>Part No.</u> <u>Exh. 2</u>	<u>Freight</u> <u>Bill No.</u>	<u>Date</u> <u>(1959)</u>	<u>Charges</u> <u>Assessed</u>	<u>Correct</u> <u>Charges</u>	<u>Amount</u> <u>of</u> <u>Undercharges</u>
1	8180	6/25	\$522.40	\$567.44	\$ 45.04
2	8205	6/30	660.78	718.74	57.96
3	6896	7/10	185.64	213.65	28.01
4	8281	7/18	88.15	279.68	191.53
5	8302	7/31	536.47	560.32	23.85
6	8299	8/ 3	524.80	543.42	18.62
7	7038	8/11	278.55	338.46	59.91
8	7098	8/24	358.64	433.82	75.18
9	7111	8/27	213.50	225.50	12.00
10	8360	8/31	897.80	937.70	39.90
11	7152	9/ 9	465.91	547.86	81.95
12	8405	9/10	43.32	50.35	7.03
13	7154	9/10	288.97	355.80	66.83
14	7228	9/24	528.06	656.37	128.31
15	7262	10/ 1	302.35	342.89	63.34
16	7334	10/20	546.23	658.63	112.40
17	7366	10/28-29	532.13	648.41	116.28
					<u>\$1,132.14</u>

3. Respondent has violated Section 3664 and Section 3667 of the Public Utilities Code by charging, demanding, collecting, and receiving a lesser compensation for the transportation of property than the applicable charges prescribed by the Commission in Minimum Rate Tariffs Nos. 2 and 8.

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 \$2,000.00, and he should be directed to collect any undercharges found after examination of his records as required by the ensuing order.

Following submission of this matter, Cunha Transportation Co., a corporation, was substituted as respondent herein in place of Joe Cunha. In the order which follows, the word "respondent" refers to Cunha Transportation Co.

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. 1-234, Highway Contract Carrier Permit No. 1-1832, and City Carrier Permit No. 1-7503 issued to Joe Cunha 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 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 its terminals 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 its radial highway common carrier, highway contract carrier, and city carrier permits have been suspended by the Commission for a period of five 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.

3. As an alternative to the suspension of operating rights imposed by Paragraph 1 of this order, respondent may pay a fine of \$2,000.00 to this Commission on or before the fortieth day after personal service of this order upon respondent. ✓

4. Respondent shall examine its records for the period from December 13, 1960, to the present time, for the purpose of ascertaining whether 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 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 the Commission.

The Secretary of the Commission is directed to cause personal service of this order to be made upon Cunha Transportation Co. The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 4th day of JUNE, 1962.

*Wesley B. Ross*

President

*E. Lynn Fox*

*George J. Brewer*

*Fredrick B. Holladay*

Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.