

ORIGINAL

Decision No. 63895

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 own motion into the operations,)
 rates and practices of SENATOR)
 TRUCK SERVICE, INC.)

Case No. 7163

E. H. Griffiths, for respondent.
Donald B. Day, for the Commission staff.

O P I N I O N

This matter was heard before Examiner Power, at San Francisco, on December 8, 1961. The submission was subject to an exhibit to be late filed after a review of respondent's financial records. This exhibit has been received and the matter is ready for decision.

This investigation was originally concerned with violations of Minimum Rate Tariffs Nos. 7 and 10. On September 5, 1961 the Commission amended the order of investigation to include a failure to pay fees due under the Public Utilities Code.

The Commission's rate exhibits contain four parts each relating to many shipments, the least number of shipments per part being 49, the largest 523. The 613 shipments of rock and sand shown in parts 1, 2 and 4 of Exhibits Nos. 3 and 5 are subject to the rates set forth in Minimum Rate Tariff No. 7. There are two sets of rates in that tariff applicable in Northern Territory which includes Fresno and Kings Counties where this transportation was performed.

The mileage rates apply only when the shipper gives notice in writing, in advance, of his intention to use this type of rate.

This provision (it appears on Second Revised Page 6 of the Tariff) makes the hourly rate the basic rate in Northern Territory. No such instruction was given respondent by the shipper here involved. If the mileage rates were intended, staff Exhibit No. 5 reveals that there were undercharges of \$5,795.37 on the 613 loads, an average of about \$9.45 per load. The proper charges under the hourly rates cannot now be calculated at all. No time was kept. This failure to keep time violates Item No. 93-A, paragraph (b) and Item No. 375 of Minimum Rate Tariff No. 7.

The testimony of respondent's witness was that he had quoted a rate higher than the hourly rate but lower than the distance rates. This statement cannot now be corroborated due to the failure to keep time as required by Tariff No. 7. The rate quotation in question was made before the services were performed. For the protection of the subhaulers who did the actual work and to assure compliance with Minimum Rate Tariff No. 7, respondent was under a duty to keep time. As we have seen, the distance rate section was not complied with and the hourly rate section may not have been. Tariff No. 7 differs from many other minimum rate tariffs of the Commission in that the compensation of subhaulers is fixed at 95 per cent of the rate. Thus, when the rates are not observed, subhaulers can suffer.

Parts 3 and 4 of Exhibits Nos. 3 and 5 deal with 133 shipments of cement (in respondent's own equipment in this case) from the plant of a firm designated in the documents simply as "Ideal" in Redwood City to a batching plant near Lemoore. Respondent quoted a rate of 26½ cents per cwt. on these moves. The correct rate, as shown by Item 200 series, Minimum Rate Tariff No. 10, is 27-¾ cents per cwt. The undercharge amounted to \$1,101.96 on the 133 shipments.

As stated, late-filed Exhibit No. 6 related to the Transportation Rate Fund fees. At the hearing the staff had presented an exhibit on this subject. The exhibit was presented through a Financial Examiner of the Commission staff who, of course, was cross-examined. It was based upon an examination of respondent's books of account. Respondent's president took strong exception to the staff exhibit in his testimony. He testified that his firm had many types of business which were not subject to the Transportation Rate Fund fees. He enumerated such things as truck service operations, intrastate operations in other states, proprietary hauling, off-highway hauling and subhauling for other carriers.

The witness, however, was unable to give specifications. He did say that the staff witness was too high and that he "could not account" for the figures of the staff witness. He requested, and was given, the opportunity to file a financial analysis to support the statements in his oral testimony. This became late-filed Exhibit No. 6. This document was too ambiguous to support the testimonial statements. Only one defect need be cited. Exhibit No. 6 starts with what is referred to as a "ledger" figure. This is ascertainably not the gross revenue of the business and just what it does and does not contain does not appear. This was the basic, but not the only defect in the exhibit.

The Commission accordingly finds that:

1. During September and December 1960 and January 1961, Senator Truck Service, Inc., transported 613 shipments of rock and sand and 133 shipments of cement from the points designated in findings Nos. 2, 3 and 4, infra, to a batch plant operated by D. Gerald Bing at Lemoore Naval Air Station.
2. One hundred ninety-eight shipments of sand originated at or near the bridge over the San Joaquin River on State Highway 41.

3. Four hundred fifteen shipments of rock originated at the L. D. Folsom plant near Coalinga.

4. One hundred thirty-three shipments of cement originated at Redwood City Harbor.

5. No notice of intention from D. Gerald Bing to ship under Section 2 rates of Minimum Rate Tariff No. 7 was received by Senator Truck Service, Inc., prior to the commencement of the rock and sand service under scrutiny in this proceeding.

6. No record of elapsed time was kept on trucks rendering rock and sand service.

7. Senator Truck Service, Inc., quoted and received a rate of 26½ cents per cwt. on cement moved from Redwood City Harbor to the D. Gerald Bing batch plant at Lemoore Naval Air Station, west of Lemoore.

8. Senator Truck Service, Inc., understated its gross revenue, in the amounts shown below in making the reports required by Section 5003 of the Public Utilities Code:

Quarter	1958		1959		1960	
	Under-statement	Fees	Under-statement	Fees	Under-statement	Fees
1st	\$13,085.71	\$32.71	\$ 723.97	\$ 1.80	\$ 7,059.11	\$ 23.53
2d	(5,855.55)	(14.62)	23,405.24	78.01	110,905.89	369.68
3d	(31,351.45)	(78.37)	21,229.31	70.76	2,636.10	8.78
4th	27,940.52	69.85	33,231.57	110.77	28,048.79	93.49
Annual Totals		9.57		261.34		495.48

(Overstatement)

Fees at ½ of 1% for 1958 and first-quarter of 1959.
Fees at 1/3 of 1% for last three-quarters of 1959 and all of 1960.

Based upon the foregoing the Commission concludes:

1. Respondent has violated Sections 3664, 3667 and 3737 of the Public Utilities Code by charging, demanding, collecting and receiving a lesser sum for such transportation than the applicable charges prescribed in Minimum Rate Tariff No. 10. The same charge as to Minimum Rate Tariff No. 7 is not proved.

2. Respondent has violated Section 3737 of said Code by failing to issue the shipping documents required by paragraph (b) of Item 93 of Minimum Rate Tariff No. 7.

3. Respondent has violated Section 5003 of said Code by failing to pay fees properly due under said section. Said fees amount to \$766.39, together with a penalty of \$191.59.

In fixing the penalty to be imposed in this case, the Commission has considered, principally, four facts. First was the extent of the violations. They involve two different minimum rate orders, plus violation of the transportation rate fund act. Second, third persons, namely the rock and sand subhaulers may have suffered a loss through failure to keep time. Third, the operations of Senator Truck Service are intermittent in character. Many of the operations it conducts require no authority from this Commission. Therefore, a suspension would be likely to have less punitive effect on this carrier than on the ordinary carrier. In the discussion of the transportation rate fund act violations, above, many of these activities were enumerated. Fourth, the following order will require respondent to collect undercharges amounting to no less than \$1,101.96 and which may amount to more.

The Commission, therefore, determines the appropriate penalty to be a suspension of twelve consecutive calendar days with an alternative of a \$5,000 fine. The suspension gives effect to minimum rate order and the rate fund act violations. The fine gives weight to actual and potential enrichment of respondent through collection of undercharges.

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. 57-1121 and Highway Contract Carrier Permit No. 57-1122 issued to Senator Truck Service, Inc., a corporation, shall be suspended for twelve consecutive calendar 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 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 its radial highway common carrier permit and highway contract carrier permit have been suspended by the Commission for a period of twelve days. Within five days after such posting it 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 the operating rights imposed by paragraph 1 of this order, respondent may pay a fine of \$5,000 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 September 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 his 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.

8. Respondent is hereby ordered and directed to pay to the Commission the sum of \$957.98 as and for delinquent Transportation Rate Fund fees and penalties, required by Section 5003 of the Public Utilities Code and more particularly set forth in finding No. 8 of the foregoing opinion.

9. On the fortieth day after personal service of this order, the permits referred to in paragraph 1 of this order shall be

suspended, such suspension shall remain in effect until all the fees and penalties required to be paid by paragraph 8 of this order have been paid in full. The suspension herein provided shall be independent of, and in addition to, the suspension conditionally imposed by paragraph 1 of this order.

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 2nd day of July, 1962.

George H. Hoover
 President

Edward E. Mitchell

Edward W. Rago

Fredrick B. Holtschoff

Commissioners

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