

Decision No. 6411S

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 own motion into the operations,)
 rates, charges and practices of)
 CECIL B. CRUZON, dba California)
 Active Truck Lines.)

Case No. 7296

Phil Jacobson for respondent.
E. O. Blackman for California Dump Truck Owners
 Association, interested party.
John T. Murphy for the Commission staff.

O P I N I O N

On March 13, 1962, the Commission issued its order instituting investigation into the operations, rates and practices of Cecil B. Cruzon for the purpose of determining whether respondent, as a highway permit carrier, has violated Section 3668 of the Public Utilities Code by charging, demanding, collecting or receiving a lesser sum for the transportation of property than the applicable charges prescribed by Minimum Rate Tariff No. 7 and supplements thereto.

Public hearing was held on May 23, 1962, before Examiner Robert D. DeWolf at Los Angeles. It was stipulated that respondent holds Radial Highway Common Carrier Permit No. 19-49223 and Highway Contract Carrier Permit No. 19-49841. It was also stipulated that Minimum Rate Tariff No. 7, together with all amendments and supplements, was properly served upon respondent.

Evidence submitted by the Commission staff.

The Commission staff presented evidence based upon a review of respondent's documents covering the months of February and March of 1961. Sixty-six transactions were examined and twenty-one selected as representing undercharges for transportation of property by respondent under his carrier permits and by use of a device by means of which respondent assisted, suffered, or permitted Rocklite Products Co., and Mission Valley Brick Co., Inc., to obtain transportation of property between points within this State at rates less than the minimum rates established by this Commission in Minimum Rate Tariff No. 7.

Exhibit No. 1 contains 23 parts which are photo copies of respondent's shipping documents, invoices, and statements. Parts Nos. 1 to 21, inclusive, each contain two documents, the first of which is headed by the name and address of respondent, with a serial number, origin ticket number, scale ticket number, blanks for "ship to", "sold to", with address, and "commodity", "amount", "customer's order no." and other blanks. The second document in each of Parts Nos. 1 to 21, inclusive, is the usual form of invoice to respondent on forms of Rocklite Products Co., Ventura, and contains dates, yards, numbers, prices and discounts, all of which are marked "resale", "F.O.B. plant", and "destination San Diego". Several of these invoices are marked "Dest. Mission Valley Brick;" and also "Cal Active Truck Lines" or "C.A.T.L."

Part No. 22 refers to invoices of Rocklite Products Co. to the respondent concerning transactions between the parties and Part No. 23 refers to invoices of the respondent to Mission Valley Brick Co., Inc.

Exhibit No. 2 contains copies of undercharge letters and notice of freight bill failure.

Exhibit No. 3 contains a summary of shipping data concerning Parts Nos. 1 through 21 of Exhibit No. 1, and was introduced into evidence through the testimony of a Commission staff rate expert. It shows differences between respondent's alleged sales price and purchase price in each of the twenty-one transactions, and shows that respondent assessed and collected charges less than the applicable minimum charges prescribed in Minimum Rate Tariff No. 7 which resulted in undercharges as follows:

<u>Cruzon No.</u>	<u>Date</u>	<u>Purchase Net</u>	<u>M.R.T. No. 7</u>	<u>Under- charge</u>
6058	2-16-61	\$122.43	\$143.51	\$21.08
6063	2-17-61	116.20	145.54	29.34
6074	2-24-61	109.98	145.09	35.11
6062	2-17-61	120.75	148.18	27.43
6065	2-15-61	122.48	147.73	25.25
6068	2-21-61	115.58	147.28	31.70
6070	2-22-61	120.75	141.88	21.13
6071	2-23-61	117.30	144.02	26.72
6073	2-24-61	117.30	140.98	23.68
6076	2-26-61	117.30	146.04	28.74
6078	2-28-61	113.85	142.16	28.31
6079	3- 1-61	118.28	143.96	25.68
6083	3- 3-61	114.13	141.65	27.52
6087	3- 7-61	114.13	149.08	34.95
6099	3-14-61	116.20	143.06	26.86
6080	3- 1-61	117.30	145.14	27.84
6084	3- 3-61	120.75	142.33	21.58
6085	3- 6-61	120.75	142.04	21.29
6093	3-10-61	113.85	142.95	29.10
6094	3-13-61	117.30	145.76	28.46
6098	3-14-61	117.30	142.83	25.53

Total \$567.30

Exhibit No. 4 which was entered by respondent through cross-examination of the staff witness is a copy of Board of Equalization Seller's Permit No. AD-28459 in the name of respondent Cecil Cruzon.

All of the twenty-one transactions represent full loads of light-weight aggregates hauled by respondent from Rocklite Products Co., Ventura, California, to Mission Valley Brick Co., Inc., San Diego, California, and are claimed by the staff to be fictitious "buy and sell" transactions or arrangements, aggregating, according to the Commission's expert witness, undercharges in the sum of \$567.30, and are found to be such for the reason that respondent intended by this device to permit the said parties to evade paying the minimum rate. Respondent testified, and his counsel represented, that there were many other similar additional transactions and arrangements and that they were desirous of a determination of this Commission as to the legality of their procedures. A staff witness testified to his conversation with respondent and his examination of the documents relating to the "buy and sell" transactions; that Mr. Cruzon told him that he receives telephone messages from the brick company in San Diego, advising him that it will need a certain number of loads delivered the next day in San Diego to its plant; that he in turn then dispatches his trucks to the Rocklite Products Co. in Ventura where loads of light-weight aggregates are picked up and then delivered to the destination in San Diego; that he purchases the material from Rocklite Products Co. and sells it to the brick company in San Diego; that he uses the same equipment in the "buy and sell" operation as he uses in his carrier operation; and that he uses the same employees.

The staff witness further testified that in checking the Los Angeles Classified telephone directory issued August 1961,

page 490, under Concrete Aggregates, he was not able to discover any listing by respondent, under Sand and Gravel, page 1807; he could not find a listing of Cecil Cruzon; and in the Compton Classified telephone directory issued October 1961, under Rock and Sand, there was no listing of Cecil Cruzon. He testified that respondent told him he has no storage facilities and the light-weight aggregate remains on his equipment from the time it is bought until it is sold; that the respondent also told him he had an open account with Rocklite Products Co.; that he would send his trucks up there to purchase the material and Rocklite Products Co. would bill him therefor; that the driver prepares a receipt (No. 6058 in Part No. 1 of Exhibit No. 1), and the invoice document is prepared from the information obtained by the driver and a copy of the weight certificate that is left at Rocklite Products Co. The staff witness testified that respondent stated he had previously handled for-hire transportation between Rocklite Products Co. and Mission Valley Brick Co., Inc., and when asked what his reason was for ceasing the for-hire transportation and using the "buy and sell" arrangements on these transactions he stated that Rocklite Products Co. would be priced out of the San Diego area because of the cost of transportation of the material under for-hire rates; that he could not meet the competition.

The testimony of the staff witness in regard to the reason for starting the use of the "buy and sell" agreements was specifically denied by respondent.

Evidence of Respondent.

Respondent testified that he has been engaged in the buying and selling of commodities of various types since 1956, consisting of light-weight aggregates and various types of poultry and animal feeds; that in the transactions involved and the other "buy and sell" arrangements he is liable for the purchase price of these commodities and makes payment to the vendor. He has a sales tax seller's permit and when a tax is applicable he collects the tax from the purchaser. He is a member of the Los Angeles Grain Exchange and as such is advised of the fluctuations in the price of grain commodities. Respondent testified that he made an oral agreement with the Mission Valley Brick Co., Inc., to furnish all of its light-weight aggregates such as volcanic cinders, pumice and dolomite and shortly thereafter made an oral agreement on or about March 1958 with Rocklite Products Co. in Ventura for the exclusive right to sell all of its commodities in San Diego County. Respondent testified that he keeps his "buy and sell" accounts separate from his carrier operations, but does not separate the maintenance and operation of the trucking equipment used to transport the commodity, and the costs would be approximately the same as in the common carrier operations. Respondent produced no other witnesses.

A review of the exhibits and the evidence discloses, and we find that respondent has no facilities for accumulating, handling, manufacturing, producing or storing aggregates; that in the purchase and sale of the aggregates the only service performed by respondent is the delivery of the material to the destination;

that respondent maintains no sales staff, engages in no advertising concerning sales; has no binding contracts for raw materials; and does not hold himself out to the public as a dealer in aggregates.

As a result of the above findings and of the further findings hereinafter set forth, the permits of respondent will be suspended for a period of five days and he will be ordered to collect the undercharges above set forth and all other undercharges revealed by his examination of his records. The use of this "buy and sell" device and the inaccurate form of shipping documents is found to be an attempt to evade the Commission's authority and Minimum Rate Tariff No. 7.

With respect to commodities other than aggregates, the record does not disclose the facts necessary to determine whether or not these other commodities are likewise handled under a "buy and sell" device to evade regulation. No staff investigation was made of respondent's handling of the other commodities. The question about the handling of this property was first raised by the respondent at the hearing. Should the staff develop facts which it believes indicate that operations involving these articles are unlawful, it should call the matter to the Commission's attention.

Findings and Conclusions.

Upon the evidence of record the Commission finds:

1. That all applicable rate orders were served upon respondent prior to the undercharges above set forth.
2. That 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. 19-49223, and as a highway contract carrier under Highway Contract Carrier Permit No. 19-49841.

3. That respondent has violated Section 3664 of the Public Utilities Code by assessing charges less than the applicable minimum charges prescribed in Minimum Rate Tariff No. 7.

4. That respondent has violated Section 3668 of the Public Utilities Code by assessing and collecting charges less than the applicable minimum charges prescribed in Minimum Rate Tariff No. 7 through the device of a fictitious "buy and sell" transaction.

O R D E R

A public hearing having been held and the Commission basing its decision on the findings and conclusions set forth in the foregoing opinion,

IT IS ORDERED that:

(1) Respondent shall cease and desist from all future violations of the Commission's Minimum Rate Tariff No. 7.

(2) 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 8 of this order, then Radial Highway Common Carrier Permit No. 19-49223 and Highway Contract Carrier Permit No. 19-49841 issued to Cecil B. Cruzon 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. Respondent shall not, by leasing the equipment or other facilities used in operations under these permits for the period of suspension, or by any other device, directly or indirectly allow such equipment or facilities to be used to circumvent the suspension.

(3) 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 contract and radial highway common 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.

(4) Respondent shall examine his records for the period from August 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 set forth herein, together with those 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 institute legal proceedings to effect collection and 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) As an alternative to the suspension of operating rights imposed by paragraph (2) 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.

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 14th day of August, 1962.

George G. Trover
President
John P. ...
Fredrick B. ...

Commissioners

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