

Decision No. 64177

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own
 motion into the operations, rates
 and practices of TORREY TRUCKING, INC.,
 a California corporation.

Case No. 7280

Milton Hallen, for respondent.
Elinore Charles, for Commission staff.

O P I N I O N

On February 13, 1962, the Commission instituted its investigation into the operations, rates and practices of Torrey Trucking, Inc.

Pursuant to the order instituting investigation, public hearing was held before Examiner Martin J. Porter on June 13, 1962, at San Diego, on which date the matter was submitted.

The purpose of this investigation is to determine whether respondent, in violation of Sections 3664 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 Tariffs Nos. 2, 8, and 10 and supplements thereto.

Facts

The Commission staff presented evidence that a review period of July 1, 1960, to March 1, 1961, was selected. Twenty-eight freight bills and supporting documents were selected as representative of the carrier's operation and were rated by the Rate Analysis Unit.

The rating of the twenty-eight shipments showed undercharges in each instance. The causes of the undercharges were in the main, failure to assess proper rates, split-delivery charges and switching charges without complying with tariff provisions, and illegal consolidation.

Respondent received undercharge letters in 1959 and 1960, with directions to ascertain if further violations existed. Thirteen of the rate violation shipments in this case had been performed during the review period directed in the undercharge letter of 1960. Respondent had informed the Commission that its review disclosed no further violations other than those mentioned in that undercharge letter.

The respondent acknowledged the correctness of the ratings by the Rate Analysis Unit and questioned the rate witness only as to rating procedure on one shipment.

It was stipulated that Torrey Trucking, Inc., holds Radial Highway Common Carrier Permit No. 37-4776, Highway Contract Carrier Permit No. 37-4697 and City Carrier Permit No. 37-4782 and that it was served with Minimum Rate Tariffs Nos. 2, 8 and 10, Distance Table No. 4 and the applicable supplements thereto; also that the respondent received a certificate of public convenience and necessity as a highway common carrier on January 18, 1962.

In mitigation the respondent testified that, since the period in which the aforesaid violations occurred, there has been a change in corporate ownership of respondent and that a rating service has been retained in an effort to prevent occurrence of rating violations in the future.

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 and highway common carrier.

2. Respondent assessed and collected charges less than the applicable charges established by this Commission in Minimum Rate Tariffs Nos. 2 and 10, 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>
00415	6/18/60	\$119.10	\$173.00	\$ 53.90
00717	8/10/60	172.24	195.52	23.28
00506	8/10/60	152.40	187.96	35.56
00543	8/12/60	144.00	152.40	8.40
00514	8/15/60	155.49	212.51	57.02
00508	8/16/60	159.75	197.03	37.28
00845	8/17/60	123.75	148.64	24.89
00509	8/19/60	154.76	190.86	36.10
00560	8/29/60	146.55	171.53	24.98
00612	9/ 6/60	149.94	194.92	44.98
00718	9/23/60	136.67	143.56	6.89
00844	9/26/60	127.71	153.22	25.51
00766	9/28/60	308.95	360.53	51.58
00841	10/12/60	127.83	153.39	25.56
00973	11/ 1/60	133.50	147.28	13.78
01876	11/30/60	142.02	148.92	6.90
01086	2/21/61	179.54	190.80	11.26
00404	6/11/60	73.15	91.44	18.29
00457	6/19/60	73.15	91.44	18.29
00891	8/24/60	142.31	177.89	35.38
00634	9/21/60	73.15	91.44	18.29
00903	9/23/60	146.30	182.88	36.58
00958	10/29/60	73.15	91.44	18.29
01837	11/21/60	73.15	91.44	18.29
01838	11/22/60	73.15	91.44	18.29
00926	12/ 7/60	146.30	182.88	36.58
02156	12/28/60	143.64	179.56	35.92

Undercharges for these shipments amounted to \$742.07.

3. Respondent violated Sections 3664 and 3737 of the Public Utilities Code by charging and collecting a compensation less than the minimum established by this Commission in Minimum Rate Tariffs Nos. 2 and 10.

4. Other asserted violations covered by the investigatory order involve tariff provisions being considered in other pending proceedings. Under the circumstances, the investigation herein should be discontinued as to such matters.

5. Respondent's permits and certificate should be suspended for a period of five consecutive days, or, in the alternative, it should be required to pay a fine of \$3,000. ✓

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. 37-4776, Highway Contract Carrier Permit No. 37-4697, City Carrier Permit No. 37-4782 and the highway common carrier certificate issued to Torrey Trucking, Inc., 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, by leasing the equipment or other facilities used in operations under these permits and certificate 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; 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, city carrier and highway contract carrier permits and certificate as a highway common carrier 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 \$3,000 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 July 1, 1960, 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 its records hereinabove required by ordering paragraph 4 and shall file with the Commission a report setting forth all undercharges found pursuant to such 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 Torrey Trucking, Inc. 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 AUGUST, 1962.

George G. Grover
President
Lawrence J. ...
Robert M. ...
Frederick B. ...

Commissioners

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