

**ORIGINAL**Decision No. 65010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations, )  
 rates, charges and practices of )  
 FORTIER TRANSPORTATION COMPANY, a )  
 corporation; and FREBRO INC., a )  
 corporation. )

Case No. 7425

Edward M. Berol and Marshall G. Berol, of Berol,  
 Loughran and Geernaert, for Fortier Transportation  
 Company; and Nathan E. Bower, for Frebro, Inc.;  
 respondents.  
Lawrence Q. Garcia and Frank O'Leary, for the  
 Commission staff.

O P I N I O N

On August 28, 1962, the Commission instituted an investigation into the operations, rates, charges and practices of Fortier Transportation Company, a corporation; and Frebro, Inc., a corporation; for the purpose of determining whether the Fortier Transportation Company had violated Sections 3664 and 3667 of the Public Utilities Code by charging and collecting a lesser sum for the transportation of property than the applicable charges prescribed in Minimum Rate Tariff No. 4-A, and supplements thereto, and Section 494 of the Public Utilities Code by charging and collecting a lesser or greater sum for the transportation of property, than the applicable rates specified in California Common Carrier Motor Freight Local and Joint Tariff No. 10, Cal. P.U.C. No. 2, Interstate Freight Carriers Conference, Inc., Agent, and Western Motor Tariff Bureau, Inc., Agent, Local, Joint and Proportional Freight Tariff No. 17-A, Cal. P.U.C. No. 33 (Elmer Ahl, Agent, Series).

Also whether respondent Fortier violated Sections 453, 459, 494 of the Public Utilities Code by paying local drayage charges to Frebro, Inc., for transporting property from Western Envelope Corporation to Fortier's San Francisco terminal, when in fact no such transportation was performed, thereby furnishing a rebate to the said Western Envelope Corporation because of its relationship with Frebro, Inc.; and whether respondent Fortier Transportation Company has violated Section 3542 of the Public Utilities Code by operating as both a highway common carrier and a highway contract carrier of the same commodities between the same points. The Order Instituting Investigation also presented the issue of whether Fortier Transportation Company should be ordered to keep all its records within the State of California, as required by Section 791 of the Public Utilities Code.

Public hearing was held before Examiner Edward G. Fraser on November 20, 1962, at San Francisco, on which date the matter was submitted.

It was stipulated that the respondent Fortier Transportation Company was served copies of Minimum Rate Tariffs Nos. 2 and 4-A, along with Distance Table No. 4 and also the supplements to the tariffs and distance table. It was further stipulated that Fortier Transportation Company is now operating under a certificate of public convenience and necessity granted by Decision No. 60456, which authorizes the transportation of general commodities, and under radial highway common carrier, highway contract carrier, city carrier and household goods carrier permits.

A Commission representative testified he made an investigation of the records of Fortier Transportation Company on March 13-21, 1962, at the company offices in Fresno, Stockton and Oakland. Twenty-three freight bills were withdrawn and photostatic copies of these bills were forwarded to the rate analysis unit for study and placed in evidence herein as Exhibit 1. A Commission rate expert introduced Exhibit 4 and testified that on nineteen of the shipments the rates charged by respondent Fortier were less than the minimum rates listed in the applicable tariffs; also that the rate charged by Fortier on four of the twenty-three shipments was greater than the rate specified in respondent Fortier's highway common carrier Tariff No. 10. The staff witnesses stated the undercharges found in Exhibits 1 and 4 occurred during February and March, 1961. The witnesses admitted that none of their exhibits (Nos. 1 and 4) includes undercharges occurring after May 1, 1961, which is the approximate date the Fortier Transportation Company was sold to a new owner, Ringsby Truck Lines, Inc.

A staff witness testified he returned to the Oakland office of Fortier Transportation Company on April 22, 1962, for the purpose of investigating the operations of Frebro, Inc., who had apparently been performing local drayage for Fortier by hauling from the San Francisco office of Western Envelope Corporation to the San Francisco terminal of Fortier. The witness obtained copies of bills of lading and freight bills (Exhibit 3) along with proof of payment (Exhibit 2) made to Frebro, Inc., on loads which were apparently hauled by Frebro for Fortier during August and September of 1961. He testified he was told by an employee of Fortier that Frebro, Inc., had been paid for

local drayage which was not performed and that payments to Frebro, Inc., were discontinued in October of 1961, when a supervisor from Fortier's Oakland terminal rode with a Fortier truck and discovered that local drayage was not required, because Fortier trucks were making daily pickups at the Western Envelope Corporation.

The witness testified that Commission records show Frebro, Inc., is operating as a highway contract carrier and a city carrier under permits issued by this Commission. These permits were issued on March 12, 1958, to Nathan Bower and Kenneth Rich. They were transferred to Frebro, Inc., after it became incorporated on August 17, 1961.

The staff witness testified that the original freight bills and documents on Fortier Transportation Company shipments are filed in the main office of Ringsby Truck Lines, Inc., in Denver, Colorado. He stated when he requested copies of the originals, they were received at his office within a week from Colorado.

#### Position of Respondent

A vice president of Ringsby Truck Lines, Inc., testified that Ringsby has owned and operated the Fortier Transportation Company since May of 1961. He stated all freight bills of the old Fortier Company were audited and many rate errors were found. He testified that Ringsby Truck Lines, Inc., instituted this audit for its own information to be sure the proper rates were charged and collected. He testified that Fortier Transportation Company will collect all of the undercharges found to be due, but that all of the undercharges found occurred before the present owners started operating the Fortier Company in May of 1961.

The manager of respondent Fortier's Oakland terminal testified that he has been employed by Fortier at the Oakland office since May of 1961 and in September of 1961 he rode with one of his drivers in the course of a routine inspection and noted a pickup was made at the Western Envelope Corporation. He stated that a week or so later he happened to see a freight bill which showed a payment to Frebro, Inc., for local drayage from Western Envelope Corporation to Fortier's San Francisco terminal. He stated he made an immediate investigation and discovered that all pickups from Western Envelope Corporation were made by Fortier Transportation Company trucks and that no service was performed by Frebro, Inc. He testified he notified Western Envelope Corporation that no further payments would be made to Frebro, Inc., and thereby lost a customer. He also notified this Commission and cooperated in organizing Exhibits 2 and 3. He further testified the payments to Frebro, Inc., were stopped in October, 1961, as soon as he discovered no service was performed by Frebro, Inc.

The representative from Frebro, Inc., did not testify and presented no other evidence. He made a statement for the record that Frebro, Inc., and the Western Envelope Corporation are owned and operated by the same two families. He stated Frebro, Inc., is a carrier with four trucks and serves only the Western Envelope Corporation and the Wilson-Rich Paper Company. He stated he had no records with him, but he was sure that neither company had violated any law.

Findings

Upon consideration of the evidence the Commission finds that:

1. The respondent Fortier Transportation Company has violated Sections 3664 and 3667 of the Public Utilities Code by assessing and collecting charges less than the applicable minimum charges prescribed in Minimum Rate Tariff No. 4-A and the supplements thereto, as indicated in Exhibits 1 and 4 herein. A list of said shipments, including the charges actually assessed and the charges the Commission finds should have been assessed as required by law, is as follows:

<u>Date of Freight Bill</u>	<u>Freight Bill No.</u>	<u>Charge Assessed by Respondent</u>	<u>Correct Charge</u>	<u>Amount of Undercharge</u>
Feb. 1, 1961	271200	\$112.73	\$184.46	\$ 71.73
Feb. 3, 1961	459351	18.29	101.00	82.71
Total Undercharges				\$154.44

2. Respondent Fortier Transportation Company has violated Sections 453, 459 and 494 of the Public Utilities Code by charging and collecting a lesser or greater sum for the transportation of property than the applicable rates specified in the highway common carrier tariffs participated in by the respondent; and also by paying local drayage charges to Frebro, Inc., for transporting property from Western Envelope Corporation to Fortier's San Francisco terminal, when in fact no such transportation was performed, thereby rebating or returning to the Western Envelope Corporation a portion of the transportation charges which were levied and collected from Western by respondent. The undercharges and overcharges noted in Exhibit 1 are set forth as follows:

<u>Date of Freight Bill</u>	<u>Freight Bill No.</u>	<u>Charge Assessed by Respondent</u>	<u>Correct Charge</u>	<u>Amount of Undercharge</u>
Feb. 1, 1961	271184	\$261.75	\$275.30	\$ 13.55
Feb. 2, 1961	S-22251	247.10	251.72	4.62
Feb. 2, 1961	507768	91.50	107.51	16.01
Feb. 10, 1961	509357	291.07	396.20	105.13
Feb. 13, 1961	536325	None	19.70	19.70
Feb. 15, 1961	536683	289.41	297.92	8.51
Feb. 16, 1961	536707	None	22.73	22.73
Feb. 16, 1961	571388	227.33	237.55	10.22
Feb. 16, 1961	571389	67.72	84.16	16.44
Feb. 17, 1961	460154	284.59	353.38	68.79
Feb. 17, 1961	508807	66.83	78.34	11.51
Feb. 20, 1961	510205	159.05	253.33	94.28
Feb. 21, 1961	537069	None	9.60	9.60
Feb. 23, 1961	272833	93.93	98.97	5.04
Feb. 23, 1961	508919	405.99	451.30	45.31
Feb. 23, 1961	510513	397.64	503.31	105.67
Feb. 24, 1961	S-26210	334.09	415.63	81.54

Total Undercharges \$638.65

<u>Date of Freight Bill</u>	<u>Freight Bill No.</u>	<u>Charge Assessed by Respondent</u>	<u>Correct Charge</u>	<u>Amount of Overcharge</u>
Feb. 17, 1961	S-26023	\$196.24	\$149.31	\$ 46.93
Feb. 21, 1961	571912	94.00	46.20	47.80
Feb. 24, 1961	S-26189	103.97	93.21	10.76
March 4, 1961	273606	54.09	41.61	12.48

Total Overcharges \$117.97

3. The record fails to show any violation of Section 3542 of the Public Utilities Code.

4. It does not appear necessary at this time to order the respondent Fortier Transportation Company to maintain its records within this State as required by Section 791 of the Public Utilities Code, inasmuch as after January of 1963 the original documents on California intrastate shipments will be filed at the terminals of Fortier Transportation Company located within the State of California. The record shows that with respect to past shipments photostatic copies of the documents the Commission investigator asked to see were delivered to him in about a week.

5. Fortier Transportation Company, a respondent herein, is engaged in the transportation of property over the public highways for compensation under a certificate of public convenience and necessity granted by Decision No. 60456 and also as a radial highway common carrier, a highway contract carrier, a city carrier and a household goods carrier.

6. Frebro, Inc., was made a respondent herein when it became apparent that it may have been used by a shipper to obtain a rebate on transportation charges paid to Fortier Transportation Company. The record shows that Frebro, Inc., holds operating authority from this Commission as a highway contract carrier and a city carrier and further shows that Frebro, Inc., may have violated one or more provisions of the Public Utilities Code. It is evident that the activities of Frebro, Inc., should be scrutinized by representatives of this Commission to determine if a formal investigation should be instituted.

7. The respondent Fortier Transportation Company, under the new ownership, has made a sincere effort to correct the practices which were prevalent prior to May of 1961. The new owners have replaced unsafe equipment, conducted an audit of both the past and present operations and have provided a new rating department.

When a corporation is sold to new stockholders, it remains liable as a continuing entity for offenses committed under the prior owners. Creditable as this remedial action may be, respondent Fortier must be held accountable for its former conduct. However, in assessing the penalty herein, we have given full weight to said remedial action.



In view of the entire record in this proceeding, the Commission finds that respondent Fortier Transportation Company's operating authorities should be suspended for a period of five days, or as an alternative to the suspension of authorities, the respondent Fortier should pay a fine of \$2,500. The respondent Fortier will be ordered to collect undercharges and to return to the shippers concerned that portion of any rates charged which are in excess of the authorized rates in the applicable highway common carrier tariffs. Respondent Fortier Transportation Company will also be ordered to collect any sums paid to Frebro, Inc., on the account of Western Envelope Corporation for local drayage service which was not performed.

O R D E R

IT IS ORDERED that:

1. If on or before the twentieth day after the effective date of this order, respondent has not paid the fine referred to in paragraph 9 of this order then the certificate of public convenience and necessity to operate as a highway common carrier, granted by Decision No. 60456, dated July 28, 1960, in Application No. 41201, Radial Highway Common Carrier Permit No. 10-4623, Highway Contract Carrier Permit No. 10-4624, City Carrier Permit No. 10-5818, and Household Goods Carrier Permit No. 19-45859 issued to Fortier Transportation Company shall be suspended for five consecutive days, starting at 12:01 a.m., on the second Monday following the twentieth day after said effective date. Respondent shall not, by leasing the equipment or other facilities used in operations under the certificate or 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.

2. 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 certificate of public convenience and necessity to operate as a highway common carrier and its radial highway common carrier, highway contract carrier, city carrier and household goods 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. Respondent Fortier Transportation Company is hereby directed to examine its records for the period from February 1, 1961, to the present time for the purpose of determining whether improper rates have been charged, and to return to the shippers or consignees concerned that portion of any rates charged which are in excess of the authorized rates in the applicable highway common carrier tariffs participated in by the respondent.

4. Respondent is further directed to examine its records and to collect any sums paid to Frebro, Inc., for transporting goods from the Western Envelope Corporation in San Francisco to the San Francisco terminal of Fortier Transportation Company where the service charged for was not performed, during the period from February 1, 1961, to the present date.

5. Respondent Fortier Transportation Company shall examine its records for the period from February 1, 1961, to the present time, for the purpose of ascertaining all undercharges that have occurred.

6. Within ninety days after the effective date of this order, respondent Fortier Transportation Company shall complete the examination of its records required by paragraphs 3, 4 and 5 of this order and shall file with the Commission a report stating the action taken to insure compliance therewith.

7. Respondent Fortier Transportation Company 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 paragraphs 4 and 5 of this order, and shall notify the Commission in writing upon the consummation of such collections.

8. In the event undercharges ordered to be collected by paragraph 7 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.

9. As an alternative to the suspension of operating rights imposed by paragraph 1 of this order, respondent may pay a fine of \$2,500 to this Commission on or before the twentieth day after the effective date of this order.

10. The Commission staff is hereby directed to undertake an investigation of the operations, rates, charges and practices of Frebro, Inc., for the purpose of determining whether Frebro, Inc., has been or is being used as a device to obtain transportation of goods for the Western Envelope Corporation at rates less than the minimum rates prescribed by this Commission.

The Secretary of the Commission is directed to cause personal service of this order to be made upon Fortier Transportation Company and Frebro, Inc. The effective date of this order shall be twenty days after making of such service.

Dated at San Francisco, California, this 26<sup>th</sup> day of FEBRUARY, 1963.

George L. Traver  
President

Carol W. Ray

Frederic B. Holbeck

William W. Bennett  
Commissioners

*I dissent, the  
circumstances herein  
involved do not warrant  
the penalty assessed.  
Peter J. Quinn*