

ORIGINAL

Decision No. 65173

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own)
 motion into the operations, rates and)
 practices of Maples Trucking Company,)
 Inc., a California corporation. }

Case No. 7383

Herbert Cameron, for the respondent.
W. F. Webster, for Rodeffer Industries, Inc.;
E. O. Blackman, for California Dump Truck Owners
 Association; interested parties.
Elinore Charles, for the Commission staff.

C P I N I O N

On June 26, 1962, the Commission instituted its order of investigation into the operations, rates and practices of Maples Trucking Company, Inc., a California corporation, for the purpose of determining whether the respondent has violated Sections 3664 and 3737 of the Public Utilities Code by charging and collecting a lesser sum for transportation performed than the applicable charges prescribed in Minimum Rate Tariff No. 7, and Item 94-C of Minimum Rate Tariff No. 7, by failing to pay all subhaulers 95 percent of the applicable minimum rate adopted and promulgated by this Commission.

A duly noticed public hearing was held before Examiner Fraser on January 23, 1963, at Los Angeles, and the matter was submitted subject to the filing of a late-filed exhibit, which has been received.

It was stipulated that the respondent is a California corporation operating under Radial Highway Common Carrier Permit No. 19-34419 and City Carrier Permit No. 13-2384; also that the

respondent was served a copy of Minimum Rate Tariff No. 7 and all of the pertinent supplements thereto, prior to the dates on which the transportation alleged herein was performed.

A Commission representative testified that he visited the traffic consultant who had the respondent's records on October 9, 10, and 11, 1961 and checked sixty-five billing statements of the carrier, which included 938 shipments delivered during the months of June, July, August and September, 1961. Seventeen billing statements were removed and photostated by the witness because they seemed to show zone and distance rate violations. The witness stated the photostatic copies are true and correct copies of the original documents and that they have been combined as Exhibit No. 1. The witness also identified Exhibit No. 1A which lists all bills on which undercharges are claimed and divides them into the 17 Parts shown in Exhibit No. 2. The witness explained that the documents in Exhibit No. 1 each list many additional bills on which the Commission staff found no rate violations. He explained that Exhibit No. 1A contains only those tickets which show undercharges. The witness testified that the respondent owns no trucking equipment, and has no terminals, shops or employees; that it hauls by subhaulers exclusively and pays them 95 percent of the rate charged; and that it operates as a dump truck hauler. He stated the Commission records show no undercharge letters have been sent to respondent and that no formal investigation of respondent's activities has ever been made.

A rate expert from the Commission staff testified that he took the set of documents now in evidence as Exhibit No. 1 along with other information presented by the prior witness and formulated

Exhibit No. 2, which gives the rate charged by the respondent and the rate computed by the Commission staff on each of the shipping tickets presented in Exhibit No. 1A. He stated the rates assessed, charged and collected by the respondent on the documents included in Exhibits Nos. 1A and 2 are lower than the lawful minimum rate allowed by Minimum Rate Tariff No. 7 and that the correct rates along with the undercharges are set out in Exhibit No. 2. The witness stated the undercharges in Exhibit No. 2 total \$4,323.54.

The president of the respondent corporation testified that the rating during the period when the undercharges occurred was performed by a business and tariff rating service which was employed for the purpose of preventing undercharges due to improper rating. He stated he did not supervise the rating because the rating agency employed supposedly knew their business. He testified there was no intent to violate the law and that he now supervises the rating in the hope of avoiding future undercharges. He further testified that the subhaulers received 95 percent of the rate charged by the respondent.

Based upon the evidence we hereby find that:

1. Respondent is engaged in the transportation of property over the public highways for compensation as a radial highway common carrier under Radial Highway Common Carrier Permit No. 19-34419 and as a city carrier under City Carrier Permit No. 13-2384.
2. Respondent was served with Minimum Rate Tariff No. 7 and the pertinent amendments and supplements thereto, prior to the transportation performed under the documents listed herein.
3. Respondent assessed and collected charges less than the applicable charges established by this Commission in Minimum Rate

Tariff No. 7, which resulted in the undercharges enumerated in Exhibit No. 2, in the total sum of \$4,323.54.

4. Respondent has violated Sections 3664 and 3737 of the Public Utilities Code by charging, demanding, collecting and receiving a lesser compensation for the transportation of property than the applicable charges prescribed in Minimum Rate Tariff No. 7 and the pertinent supplements thereto.

5. Respondent has violated the provisions of Item 94-C of Minimum Rate Tariff No. 7 and supplements thereto by failing to pay the subhaulers employed by the respondent 95 percent of the correct minimum rate promulgated by this Commission.

The respondent will be required to pay a fine of \$5,000 and to collect all undercharges which resulted from transportation service provided on or after May 1, 1961.

O R D E R

IT IS ORDERED that:

1. On or before one hundred twenty days after the effective date of this order, respondent shall pay a fine to the Commission in the sum of \$5,000.

2. If respondent has not complied with this order by paying said fine within the time designated, the Commission shall institute appropriate action against respondent to collect said fine.

3. Respondent shall review its records from May 1, 1961 to the present time and shall remit to each of the subhaulers used during this period the difference between the amount paid to the

subhauler and 95 percent of the appropriate rate listed in Minimum Rate Tariff No. 7 and the supplements thereto.

4. Respondent shall examine its records for the period from May 1, 1961 to the present time, for the purpose of ascertaining all undercharges that have occurred and shall notify the Commission in writing upon the completion of such payments.

5. Within ninety days after the effective date of this order, respondent shall complete the examination of its records required by paragraphs 3 and 4 of this order and shall file with the Commission a report setting forth the subhaulers by name and the amount owed to each. The report shall also include a list of the total undercharges found pursuant to the examination of its records ordered by paragraph 4 herein.

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. In the event any payments to be made, as provided in paragraph 3 of this order, remain unpaid 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 setting forth the action taken to pay the subhaulers and the result of such action until payments have been made 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 the 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 APRIL, 1963.

George A. Grover
President
Robert L. Dyer
Wendell W. Deane
Fredrick B. Holoboff
Stallman W. Burnett
Commissioners