

ORIGINALDecision No. 65242

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 own motion into the operations,)
 practices, rates, and charges of)
 BERT R. PROUTY, an individual.)

Case No. 7427
 (Filed Sept. 13, 1962)

Charles D. Gilbert, for respondent.

Richard D. Gravelle, for the Commission staff.

O P I N I O N

This is an investigation on the Commission's own motion into the operations, practices, rates, and charges of Bert R. Prouty, an individual, who operates as a radial highway common carrier.

A duly noticed public hearing was held in this matter before Examiner Jarvis at Turlock, on November 14, 1962. The matter was submitted subject to the filing of a late-filed exhibit, which has been received.

The purpose of this investigation is to determine, with respect to certain specified transportation, whether respondent has violated Sections 3664, 3667 and 3737 of the Public Utilities Code by charging, demanding, collecting or receiving charges less than the applicable minimum rates set forth in Minimum Rate Tariff No. 2.

Respondent's operating equipment consists of eight tractors, seven sets of doubles consisting of trailers with flatbed equipment and four sets of doubles consisting of dump trailers. He employs seven drivers. His wife also assists in the business. Respondent's gross revenues for the latest available four quarters were \$147,802.

Respondent concedes that 16 of the violations occurred as alleged, and they will not be further discussed.

Respondent contends that no undercharge exists in connection with Freight Bill No. 5730. The Commission staff contends that there is an undercharge of \$2.54 in connection with that freight bill. The difference occurs because the staff rated the shipment as one from Riverbank to Oakdale, which points are approximately five miles apart, whereas the respondent rated it as one from Riverbank to a point of delivery 4.4 miles east of Riverbank. The staff's rating was based upon documents in respondent's files, while the evidence at the hearing indicated that the shipment actually went from Riverbank to the Rodden Ranch which is located 4.4 miles east of Riverbank. The Commission finds that no undercharge exists in connection with Freight Bill No. 5730, but that respondent's records regarding such shipment did not comply with the requirements of Item 255-E of Minimum Rate Tariff No. 2 in that they did not accurately show the point of destination of the shipment.

Respondent and the staff agree that undercharges exist with respect to Freight Bills Nos. 5908 and 5909, but they differ on the amount. The staff derived its figures by computing constructive mileage via Tracy, whereas respondent derived his figures by computing constructive mileage from Banta because the actual route of travel was over the Banta cutoff. The Commission finds that respondent's figures should be used in determining these particular undercharges.

The staff introduced evidence to show that in 1959 and 1960, respondent was sent letters by members of the staff indicating that in certain instances he was not charging the correct rates provided for in Minimum Rate Tariff No. 2. The 1959 letter did not deal with any commodities or points here involved. The 1960 letter dealt with one commodity but none of the points here involved.

Respondent introduced evidence attempting to show extenuation and mitigation. This evidence indicates that at the time of the events here involved respondent and his wife, neither of whom has had any instruction in the interpretation of tariffs, rated the freight bills; that several of the mistakes were due to their ignorance of tariff provisions; that three of the 18 undercharges were due to their applying a rate previously ascertained from the Commission staff and their not realizing that the rate had been increased in the interim; and that since this investigation was commenced respondent has hired the West Coast Freight Tariff Bureau to audit certain previous bills and as a rate consultant for the future.

Based upon the evidence of record in this matter the Commission finds that:

1. Respondent holds Radial Highway Common Carrier Permit No. 50-3059.
2. The Commission's Minimum Rate Tariff No. 2 and all supplements thereto as well as the Commission's Distance Table No. 4 and all supplements thereto were served on respondent.

3. During the year 1961, respondent transported under authority of his radial highway common carrier permit shipments between various points in the State of California upon which improper charges were assessed. A list of said shipments including the charges actually assessed as well as the charges the Commission finds should have been assessed as required by law, is as follows:

<u>Freight Bill No.</u>	<u>Date of Shipment</u>	<u>Weight (Lbs.)</u>	<u>Respondent's Charge</u>	<u>Correct Charge</u>	<u>Under- Charge</u>
4841	7-10-61	46,354	\$106.61	\$113.57	\$ 6.96
3594	7-31-61	51,570	46.41	51.57	5.16
4645	8- 61	49,860	49.86	59.83	9.97
4352	8- 6-61	40,860	40.86	59.25	18.39
4672	8- 9-61	47,604	109.49	116.63	7.14
5763	8-15-61	48,770	43.89	48.77	4.88
5764	8-15-61	48,770	21.95	24.39	2.44
5666	8-25-61	50,930	50.93	61.12	10.19
5667	8-30-61	50,400	50.40	60.48	10.08
1816	9-29-61	48,000	81.60	120.00	38.40
4375	10- 61	48,000	100.80	134.40	33.60
1824	10- 3-61	65,940	48.47	66.16	17.69
5908	10-4,5-61	41,950	52.44	71.32	18.88
5909	10-6,7-61	43,720	49.07	68.74	19.67
4784	10-30-61	48,000	81.60	120.00	38.40
3833	11- 4-61	48,000	81.60	120.00	38.40
4893	11-28-61	43,830	56.98	61.36	4.38
3914	12-20-61	48,416	111.36	118.62	7.26
			Total		\$291.89

4. Respondent violated Sections 3664 and 3667 of the Public Utilities Code by charging, demanding, collecting or receiving a lesser compensation for the transportation of property as a radial highway common carrier than the minimum charges prescribed in the Commission's Minimum Rate Tariff No. 2.

5. Respondent's operating rights should be suspended for a period of three consecutive days, or, in the alternative, respondent should be required to pay a fine of \$600.

6. Respondent should be ordered to collect the undercharges hereinabove found and to examine his records from April 1, 1962 to the present time for the purpose of ascertaining whether additional undercharges exist.

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 of \$600 referred to in paragraph 7 of this order, then Radial Highway Common Carrier Permit No. 50-3059 issued to Bert R. Prouty shall be suspended for three 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 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.

2. 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 radial highway common carrier permit has been suspended by the Commission for a period of three 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 shall examine his records for the period from April 1, 1962 to the present time, for the purpose of ascertaining all undercharges that have occurred.

4. Within ninety days after the effective date of this order, respondent shall complete the examination of his records required by paragraph 3 of this order and shall file with the Commission a report setting forth all undercharges found pursuant to such examination.

5. 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 3 of this order, and shall notify the Commission in writing upon the consummation of such collections.

6. In the event undercharges ordered to be collected by paragraph 5 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.

7. As an alternative to the suspension of operating rights imposed by paragraph 1 of this order, respondent may pay a fine of \$600 to this Commission on or before the twentieth day after the effective date 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 11th day of APRIL, 1963.

George L. Thayer
President

John R. [unclear]

Ernest W. [unclear]

Frederick B. Holoboff

William W. Burnett
Commissioners