

Decision No. 65437**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 Max M.
Magers, dba MAGERS TRANSPORTATION.

Case No. 7462
(Filed October 16, 1962)

Max M. Magers, in propria persona.

Sheldon Rosenthal, for the Commission staff.

O P I N I O N

This proceeding pertains to the operations, rates, and practices of Max M. Magers, operating as a radial highway common carrier pursuant to Permit No. 49-1999, as amended August 15, 1961.

A public hearing was held in Santa Rosa on February 8, 1963, before Examiner Rowe, to determine whether respondent has violated Sections 3664, 3667 and 3737 of the Public Utilities Code of California by charging and collecting rates less than the applicable minimums, by failing to comply with the provisions pertaining to split pickups and deliveries, by failing to enter on freight bills origins and destinations or descriptions or weights of commodities transported or their charges, and by failing to maintain a copy of each shipping document, freight bill, or other evidence of transportation. The matter was submitted on the same date.

The staff furnished evidence that respondent had been served with the Commission's Minimum Rate Tariff No. 2 and revisions and supplements, and Distance Table No. 4, as revised. Also, on

May 1, 1961, he was notified that his records revealed undercharges and he was directed to review his records. A prior permit, Radial Highway Common Carrier Permit No. 49-1378 was revoked on July 20, 1954, for failure to file quarterly reports and pay fees. The present permit was suspended by the Commission on January 11, 1963, for failure to file appropriate evidence of insurance coverage. Respondent has at present no insurance on file with the Commission.

Respondent has experienced several years of financial adversity including bankruptcy in 1954. At the present time he has completely abandoned radial highway common carrier operations on his own and is now in the employ of another carrier.

The staff examined the records and freight bills, bills of lading and other documents supplied by respondent. These documents had apparently been thrown into a box and no consistent record of the respective transactions kept. The staff placed in evidence photocopies of 32 freight bills and related documents. The staff rate expert was able to compute the applicable minimum charges on only 16 of the shipments as shown in the table following. The remaining shipments could not be rated because respondent failed to enter on his freight bills the precise point of origin and/or destination, the description and/or weight of commodities transported, and/or charges assessed. Respondent testified that he was convinced that on occasion his drivers had collected charges from shippers, put the money in their pockets and furnished him with no evidence of the movement or of payments of the charges.

We hereby find that the following table correctly states the several charges assessed by respondent for transportation performed by him, the minimum charges applicable, and the resulting undercharges totaling \$719.00:

<u>Freight Bill Number</u>	<u>Date</u>	<u>Charge Assessed</u>	<u>Minimum Charge</u>	<u>Undercharge</u>
4859	9/ 1/61	\$345.07	\$438.89	\$93.82
4861	9/12/61	346.03	440.63	94.60
4853	9/26/61	198.40	215.46	17.06
4858	9/28/61	308.35	393.59	85.24
4857	10/ 4/61	335.98	427.56	91.58
4960	10/13/61	269.00	333.02	64.02
0019	10/19/61	191.68	218.82	27.14
4658	11/ 1/61	156.34	256.58	100.24
0020	11/13/61	144.94	169.10	24.16
4874	11/13/61	61.52	71.77	10.25
0023	11/27/61	52.80	73.10	20.30
0024	12/ 1/61	193.40	200.34	6.94
4668	12/ 5/61	194.56	208.40	13.84
0030	1/ 3/62	146.12	205.70	59.58
4923	1/13/62	134.62	139.61	4.99
0038	1/26/62	<u>141.48</u>	<u>146.72</u>	<u>5.24</u>
Total		\$3,220.29	\$3,939.29	\$719.00

From the evidence the Commission finds that respondent as a highway permit carrier has violated Sections 3664, 3667 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. 2 and supplements thereto, has violated Section 3737 of said Code and Items 160 and 170 of Minimum Rate Tariff No. 2 by failing to comply with the applicable provisions pertaining to split pickups and deliveries; has violated said Section 3737 and Item 255 of said Minimum Rate Tariff No. 2 by failing to enter on freights bills the proper point of origin and destination and description and weight of commodities transported by him and to properly rate and charge for his transportation thereof; and has violated said Section 3737

and Item 255 of said minimum rate tariff by failing to maintain a copy of each shipping document, freight bill, or other evidence of transportation; and that respondent failed to file evidence of adequate liability insurance by January 11, 1963, as directed by Notice of Impending Suspension of Permit served on him under date of December 12, 1962, or at all.

Having found facts as hereinabove set forth, and based upon the record herein, the Commission concludes that Max M. Magers has abandoned radial highway common carrier service and has evidenced a contemptuous and flagrant disregard for the Commission's rules and regulations and that therefore his Radial Highway Common Carrier Permit No. 49-1999 should be revoked.

Based upon the foregoing findings and conclusions it will be ordered that respondent's permit be revoked. Max M. Magers is placed on notice that no highway carrier permit will be issued to him unless and until evidence is presented to this Commission that all provisions of the following order have been fully complied with. The same notice will apply to any partnership or corporation in which Max M. Magers has any substantial interest.

O R D E R

IT IS ORDERED that:

1. Radial Highway Common Carrier Permit No. 49-1999 is hereby revoked.

2. Respondent shall take such action, including legal action, as may be necessary to collect the amounts of undercharges set forth in the opinion and identified with freight bills numbered 4859, 4861, 4853, 4858, 4857, 4960, 0019, 4658, 0020, 4874, 0023, 0024, 4668, 0030, 4923, and 0038, and shall notify the Commission in writing upon the consummation of such collections.

3. In the event undercharges ordered to be collected by paragraph 2 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 and the result of such action, until such undercharges have been collected 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 respondent. The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 21st day of MAY, 1963.

George A. Crowe
President
John S. Litcher
Fredrick B. Hoffhoff
William W. Bennett

Commissioners