

**ORIGINAL**

Decision No. 65439

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  
NICK SMITS TRUCKING, INC., a  
corporation.

Case No. 7431

Plotkin, Cossman & Delk, by Leonard A. Delk,  
for respondent.  
Richard D. Gravelle for Public Utilities Com-  
mission staff.

O P I N I O N

This is an investigation, instituted on the Commission's own motion, into the operations, rates and practices of Nick Smits Trucking, Inc., a corporation, operating as a Radial Highway Common Carrier and Highway Contract Carrier pursuant to permits Nos. 19-44123 and 19-50647, respectively, which permits at all times hereinafter mentioned were and now are in full force and effect.

Public hearings were held on December 19, 1962, and February 14, 1963, in Los Angeles, before Examiner Chiesa, to determine whether said respondent corporation violated Sections 3664, 3667 or 3737 of the Public Utilities Code, by charging, demanding, collecting, or receiving charges less than the applicable minimum rates prescribed in Minimum Rate Tariff No. 2 and supplements and amendments thereto.

Oral and documentary evidence having been adduced, the matter was submitted for decision.

Respondent has been specializing in the transportation of bulk dairy feed for the United Dairymen's Association for approximately 13 years. Approximately 90 percent of respondent's business is transacted for the association on a contract basis. Respondent is the only carrier used by the association for the transportation of its products to its members. The latter are principally located in Los Angeles basin and in Coachella Valley. Respondent's president testified that there was no intention to charge less than the applicable rates and that the undercharges, if any, resulted from misinformation or misapplication of the proper rates by a former employee. However the evidence shows that instead of using constructive mileage, as required by the tariff, respondent applied mileages from a table prepared independently by respondent which it believed reflected the correct distance between the association's yard and the various points of destination.

The Commission finds that:

Respondent was engaged in the transportation of property as radial highway common carrier and highway contract carrier pursuant to permits Nos. 19-44123 and 19-50647, respectively, during the period the transportation referred to herein was performed.

All applicable minimum rate orders and distance tables and any supplements or amendments thereto were served upon respondent prior to shipments hereinafter noted.

Respondent assessed and collected charges less than the applicable minimum charges prescribed in Minimum Rate Tariff No. 2, and supplements and amendments thereto, which resulted in undercharges as hereinafter set forth and as more specifically described and explained in Exhibits Nos. 1 and 2 in this proceeding:

<u>Exhibits Nos. 1 and 2 Part No.</u>	<u>Freight Bill No.</u>	<u>Date</u>	<u>Amount of Undercharge</u>
1	0090	1-19-62	\$ 45.44
2	0092	1-31-62	4.07
3	5118	2- 9-62	4.19
4	5122	2-16-62	12.63
5	5123	2-17-62	14.23
6	0095	2-28-62	44.31
7	5459	3- 6-62	25.08
8	5460	3- 9-62	2.31
9	5461	3-12-62	6.38
10	1966	3-16 to 20-62	4.44
11	2155	3-20-62	2.00
12	1967	3-21 to 24-62	4.29
13	2107	3-21 to 27-62	6.75
14	0097	3-28-62	2.06
15	5465	3-29-62	6.28
16	1542	3-31-62	4.00
17	2161	3-31-62	5.17
18	2064	4- 2 to 5-62	4.43
19	5469	4- 2-62	6.37
20	0098	4- 3-62	2.16
21	2465	4- 2-62	4.86
22	5059	4- 5-62	34.86
23	2352	4- 6-62	5.28
24	2401	4- 7 to 9-62	4.34
25	1742	4-14-62	5.00
26	5150	4-24-62	6.12
		Total Undercharges	\$267.05

Respondent (1) charged and collected a lesser rate than the minimum rate established by this Commission (Section 3664), (2) charged for the transportation of property and for service in connection therewith rates or charges less than the minimum rates or charges applicable to such transportation as established or approved by the Commission (Section 3667), and (3) failed to observe the provisions of Minimum Rate Tariff No. 2 applicable to the class of transportation service performed by respondent (Section 3737).

As shown in Exhibits Nos. 1 and 2, the undercharges herein found to exist resulted principally from respondent's

failure to apply the proper combination of rail rates and rates named in Minimum Rate Tariff No. 2 because respondent assumed that certain off-rail points of origin and/or destination were rail points. In other instances respondent failed to apply the appropriate constructive mileage.

Based upon the foregoing findings of fact, the Commission concludes that respondent Nick Smits Trucking, Inc., has violated Sections 3664, 3667 and 3737 of the Public Utilities Code by charging, demanding, collecting and receiving a lesser sum for transportation than the charges prescribed by the Commission's applicable minimum rate order.

O R D E R

IT IS ORDERED that:

1. Nick Smits Trucking, Inc., shall forthwith cease and desist from charging, demanding, collecting, or receiving for the transportation of property, or for any service in connection therewith, rates and charges less than the minimum rates and charges or greater than the maximum rates and charges applicable to such transportation established or approved by the Commission, and shall observe the provisions of any tariff, decision or order applicable to respondent.

2. Nick Smits Trucking, Inc., a corporation, and respondent herein, shall on or before the thirtieth day after the effective date of this order, pay a fine of \$2,500.00.

3. Respondent shall examine its records for the period from July 1, 1961, to the effective date of this order, for the purpose of ascertaining all undercharges that have occurred.

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

The Secretary of the Commission is directed to cause personal service of this order to be made upon the respondent, Nick Smits Trucking, Inc.

The effective date of this order shall be twenty days after the date hereof.

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

George J. Grover  
President

Fredrick B. Hallock

William W. Bennett

Commissioners

Commissioner Everett C. McKeage, being necessarily absent, did not participate in the disposition of this proceeding.