

ORIGINAL

Decision No. 65556

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion into the operations,)
rates, charges and practices of)
LYNN TRUCKING CO., a corporation.)

Case No. 7542
(Filed January 29, 1963)

William A. Hart, for respondent.

Timothy E. Treacy and Frank J. O'Leary,
for the Commission staff.

O P I N I O N

The purpose of this investigation is to determine whether respondent, in violation of Sections 3664, 3667 and 4013 of the Public Utilities Code, has charged, demanded or received a lesser compensation for the transportation of property than the applicable charges prescribed by this Commission.

Public hearing was held before Examiner Rowe on May 2, 1963, in Sacramento, and after the receipt of evidence the matter was duly submitted for decision.

The Commission staff presented evidence that a review period of January 8 to May 28, 1962, had been selected. Two hundred and fifteen freight bills issued during the period were audited and it appears that 10 violations were disclosed. These were sent to the Rate Analysis Unit for rating and in each instance there were undercharges.

Evidence was produced and respondent stipulated that his authority was that of Radial Highway Common Carrier under Permit No. 34-3397 and City Carrier under Permit No. 34-3648 and that he had

been served with Minimum Rate Tariff No. 2, all applicable supplements and Distance Table No. 4. Respondent's gross revenue was shown to be \$91,623 during 1962.

Based upon the evidence we find that:

1. Respondent is engaged in the transportation of property over the highways for compensation as a city carrier and as a radial highway common carrier.

2. Respondent assessed and collected charges less than the applicable charges established by this Commission in Minimum Rate Tariff No. 2 which resulted in undercharges as follows (Exhibit No.3):

<u>Freight Bill</u>	<u>Date</u>	<u>Charge Collected</u>	<u>Correct Charge</u>	<u>Under-charge</u>
5296	1/ 8/62	\$217.54	\$279.34	\$ 61.80
5326	1/31/62	184.80	237.30	52.50
5377	3/ 6/62	206.80	265.55	58.75
5380	3/19/62	197.38	253.46	56.08
5427	4/13/62	206.36	264.99	58.63
5449	5/ 7/62	207.64	266.63	58.99
4459	5/25/62	202.40	259.90	57.50
5364	2/15/62	50.00	56.30	6.30
5419	4/ 5/62	51.30	56.30	5.00
5431	4/11/62	99.70	125.80	26.10

Undercharges for these shipments amounted to \$441.65

3. The aforesaid undercharges are found to have resulted because of the following:

(a) The charges assessed by respondent in parts 1 through 7, inclusive, of Exhibit No. 3 being the first seven freight bills listed above were computed as though all the consignees were on rail and for which a rail route had been established. According to the evidence the nearest rail route was that established by Southern Pacific Company between Millbrae and Torrance. As the consignor was located in Redondo Beach the Commission rate expert applied the correct rail rate of 44½

cents per 100 pounds instead of 44 cents that incorrectly had been applied by respondent and also properly added a 12 cents per 100 pounds charge as provided in Item No. 505, Seventeenth Revised Page 42 of Minimum Rate Tariff No. 2, being Class C rate of 12 cents per 100 pounds, minimum weight 36,000 pounds for 4.5 constructive miles from origin to the Pacific Electric team track at Torrance. Class C rating is provided in Item 89530-A, Supplement 9 to Western Classification 77 of J. P. Hackler, Agent. The one-half cent increase was assessed in accordance with Tariff of Increased Rates and Charges X-223 from Torrance to Millbrae.

(b) The rate assessed by respondent for the movement represented by freight bills numbered 5364 and 5419 was 50 cents per 100 pounds based upon a minimum of 10,000 pounds. The Commission rate expert correctly rates this movement at the 4th Class rate of 55 cents per 100 pounds as provided by Item No. 505, Seventeenth Revised Page 42 of Minimum Rate Tariff No. 2. This 4th Class rating is provided in Item No. 334½, First Revised Page 37-C of Minimum Rate Tariff No. 2.

(c) The charges assessed by respondent for the movement represented by Freight Bill No. 5431 were computed at 40 cents per 100 pounds for a minimum of 20,000 pounds plus split delivery charges aggregating \$19.70 or a total charge of \$99.70. The staff witness correctly rated the minimum of 20,000 pounds at 46 cents per 100 pounds as required by Item No. 505, Seventeenth Revised Page 42 of Minimum Rate Tariff No. 2, 4th Class rate for 104 constructive miles from San Leandro to Sacramento. This 4th Class rating for tile, cement, mortar and

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putty is provided in Items 21540, 21730 and 75090 of Western Classification 77, respectively. The split delivery charges should have aggregated \$32.10 as provided in Item No. 170, Twenty-second Revised Page 21 of Minimum Rate Tariff No. 2 instead of the \$19.70 assessed by respondent. Finally, respondent omitted the surcharge of \$1.70 as provided in Supplement No. 58 to Minimum Rate Tariff No. 2.

4. As shown by the above undercharges respondent is found to have violated Sections 3664 and 3667 of the Public Utilities Code by charging and collecting a compensation less than the minima established by this Commission in Minimum Rate Tariff No. 2.

5. Respondent should be fined in the sum of \$1,000 and ordered to collect all undercharges which have resulted from transportation service provided after May 28, 1962.

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 \$1,000.

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 examine its records for the period from May 28, 1962 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.

4. Within ninety days after the effective date of this order, 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 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 3 herein.

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 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 June, 1963.

George T. Grover President
Robert W. Ray
Fredrick B. Harshoff
William W. Bennett

Commissioners
-5-Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.