

Decision No. 6602S

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations,  
rates, charges, and practices of  
ARTHUR H. VAN HOLLAND and OSCAR  
DE VRIES, doing business as  
A and O TRUCKING.

Case No. 7560  
(Filed February 19, 1963)

Arthur H. Van Holland and Oscar De Vries, re-  
spondents, appearing in their own behalf.

Laurence Q. Garcia and Charles P. Barrett, for  
the Commission staff.

O P I N I O N

On February 19, 1963, the Commission instituted an investigation into the operations, charges and practices of Arthur H. Van Holland and Oscar De Vries, doing business as A and O Trucking, hereinafter referred to as respondents.

Public hearing was held before Examiner Chiesa on April 17, 1963, at Los Angeles, on which date the matter was submitted.

The purpose of this investigation was to determine whether respondents have violated Section 3664 of the Public Utilities Code by charging or collecting a lesser rate than the minimum rate; Section 3667 by charging, demanding, collecting or receiving rates or charges less than minimum rates and charges, or by directly or indirectly paying any commission or refund, or remitting in any manner or by any device to Western Livestock Mineral Co. of Artesia, California, any portion of the rates and charges specified in Minimum Rate Tariff No. 2 and supplements

thereto; Section 3737 by failing to observe the provisions of the tariffs, decisions or orders applicable to respondents; and to determine whether respondents' operating authority should be ordered suspended or revoked, or other appropriate order issued.

Two staff witnesses testified and five exhibits were placed in evidence by staff counsel. Arthur H. Van Holland, a partner, and respondents' accountant, also testified.

The evidence shows that respondents are engaged as a radial highway common carrier limited to the transportation of livestock feed and as a city carrier within eight cities in the Los Angeles area, the permits being Nos. 19-53206 and 19-54044, respectively; that respondents have been operating as a permitted carrier approximately three years; that their present equipment consists of three tractors, three semitrailers and one truck, all equipped with automatic loading devices; that, in addition to the partners who also are drivers, two full-time drivers, two part-time drivers and a part-time accountant are employed; that respondents have only one shipper customer, Western Livestock Mineral Co. of 17104 Pioneer Boulevard, Artesia, California, where respondents keep their equipment and have office space.

A staff witness testified that in October of 1962, he investigated respondents' operations covering a period from June 1, 1960, through September 30, 1962; that respondents had no terminal or place of business of their own and that their records were usually kept by their part-time bookkeeper; that respondents had in their possession current copies of Minimum Rate Tariff No. 2 and Distance Table No. 4; that his investigation disclosed eleven shipments, between June 4, 1962, and August 6, 1962, transported by respondents for Western Livestock Mineral Co., for less than the

applicable minimum rate as more specifically hereinafter listed and set forth in Exhibit No. 5 in this proceeding; that respondents' gross revenue for the year 1962 was \$118,813.00.

The evidence also shows that on April 6, 1961, this Commission mailed to respondents an undercharge letter informing them of certain specific undercharges as shown in the four-page attachment to said letter (Exhibit No. 3) and directing respondents to review their records to ascertain the amount of undercharges and collect same from shippers; that respondents, in their letter of May 23, 1961 (Exhibit 4), reported the undercharges to be in the amount of \$8,749.49; that thereafter and prior to August 22, 1961, respondents collected \$8,749.49 in undercharges from Western Livestock Mineral Co.; that on or about August 22, 1963, respondents and Western Livestock Mineral Co. entered into an agreement whereby respondents would pay to Western Livestock Mineral Co. \$800.00 per month for the following:

1. Shipper (Western Livestock Mineral Co.) would load carrier's trucks at night without the driver being present.
2. Shipper would weld without charge small cracks in the carrier's bulk equipment.
3. Shipper would provide deck and office space for the carrier.
4. Shipper would make no charge to the carrier for weighing the shipments being transported.
5. Shipper would provide free parking for the carrier's trucks.
6. Carrier would be provided a limited telephone service by means of the shipper's telephone operator;

that prior to said agreement said services were rendered for respondents by Western Livestock Mineral Co. without charge; that

pursuant to said agreement respondents paid to Western Livestock Mineral Co. thirteen monthly payments as follows:

August 22, 1961	- \$800.00	March 7, 1962	- \$800.00
September 5, 1961	- "	April 13, 1962	- "
October 2, 1961	- "	May 7, 1962	- "
November 4, 1961	- "	June 8, 1962	- "
December 7, 1961	- "	July 10, 1962	- "
January 6, 1962	- "	August 2, 1962	- "
February 10, 1962	- "		

No evidence was offered to explain or justify the value placed on any of said services which had previously been rendered gratis; on the other hand, it appears that after the undercharge letter, Western Livestock Mineral Co. informed respondents that they would have to make certain concessions in order to continue the hauling and it was then agreed that respondents would pay \$800.00 per month for said services.

Based upon the evidence we find that:

1. Respondents are operating as a radial highway common carrier under Permit No. 19-53206 and as a city carrier under Permit No. 19-54044 and that they have been served with Minimum Rate Tariff No. 2 and Distance Table No. 4 and all applicable supplements thereto.

2. Respondents performed transportation services, as a radial highway common carrier, for Western Livestock Mineral Co. for less than the applicable charges established by this Commission in Minimum Rate Tariff No. 2 which resulted in undercharges as follows (Exhibit No. 5):

<u>Freight Bill No.</u>	<u>Date</u>	<u>Charge Collected</u>	<u>Correct Charge</u>	<u>Undercharge</u>
231	6/4/62	96.00	108.00	12.00
235	6/9/62	90.77	94.14	3.37
241	6/14/62	96.00	108.00	12.00
456	6/22/62	167.44	171.08	3.64
249	6/25/62	158.79	162.24	3.45
453	6/28/62	81.79	88.61	6.82
466	7/9/62	82.49	85.54	3.05
470	7/14/62	95.04	105.60	10.56
499	7/30/62	43.50	46.50	3.00
270	8/6/62	94.64	98.14	3.50
261	8/8/62	27.75	31.50	3.75
Total Undercharges				\$65.14

3. In each instance the undercharges enumerated in paragraph 2 of these findings resulted from respondents' erroneous application of the rates as provided in Item 654½, 5th Revised Page 51-A of Minimum Rate Tariff No. 2 and of the constructive miles from the point of origin to the point of destination as provided in Distance Table No. 4 and as set forth in Parts 1 to 11, inclusive, of Exhibit No. 5.

4. Respondents, by the purported payments of \$800.00 per month for services rendered by Western Livestock Mineral Co. to respondents, refunded or remitted a portion of the rates or charges received by respondents for transportation performed for Western Livestock Mineral Co.

5. The agreement between respondents and Western Livestock Mineral Co., whereby respondents paid \$800.00 monthly for services hereinabove enumerated, was a device whereby respondents assisted and permitted Western Livestock Mineral Co. to obtain transportation for property at rates less than the minimum rates established by the Commission.

Based upon the foregoing findings of fact, the Commission concludes that Arthur H. Van Holland and Oscar De Vries have violated Sections 3664, 3667, 3737, and 3668 of the Public Utilities Code.

O R D E R

IT IS ORDERED that:

1. Arthur H. Van Holland and Oscar De Vries, doing business as A and O Trucking, respondents herein, 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 applicable to such transportation established or approved by the Commission, and shall observe the provisions of any tariff, decision or order applicable to respondents.

2. Respondents shall, on or before the thirtieth day after the effective date of this order, pay a fine of \$5,000.00 to this Commission.

3. Respondents shall examine their records for the period from June 1, 1962, to the effective date of this order, for the purpose of ascertaining all undercharges together with any monthly payment of \$200.00 to Western Livestock Mineral Co. other than the payments set forth herein, that have occurred.

4. Within ninety days after the effective date of this decision, respondents shall complete the examination of their 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. Respondents shall take such action, including legal action, as may be necessary to collect the amounts of undercharges and the monthly payments 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, respondents 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. Respondents shall cease and desist from charging rates less than the minimum rates established by the Commission or, by rebating or refunding or by any other device, assisting or permitting Western Livestock Mineral Co., or any other corporation or person, to obtain transportation for any property at rates less than the minimum rates then established or approved by the Commission.

The Secretary of the Commission is directed to cause personal service of this order to be made upon respondents,

Arthur H. Van Holland and Oscar De Vries. The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 17th day of September, 1963.

William L. Bunker  
President  
John E. Fitch  
Charles W. King  
George H. Grover  
Frederick B. Hallock  
Commissioners