

ORIGINALDecision No. 66341

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations,)
 rates, charges, and practices of)
 A. J. BARBERO, doing business as)
 the BARBERO TRUCK LINES.)

Case No. 7588

Marvin J. Colangelo, for respondent.
Robert C. Marks, for the Commission staff.

O P I N I O N

On April 2, 1963, the Commission issued its order instituting an investigation into the operations, rates and practices of A. J. Barbero, doing business as Barbero Truck Lines.

A public hearing was held before Examiner Porter on June 19 at Ukiah and July 18 and 19 and August 21, 1963, at San Francisco, on which latter date the matter was submitted.

Respondent presently conducts operations pursuant to radial highway common carrier, highway contract carrier, and petroleum contract carrier permits.

Respondent has a terminal in Ukiah, California. He owns and operates 26 power units and 60 trailers. His total gross revenue for the second, third and fourth quarters of 1962 and for the first quarter of 1963 was \$476,804.

It was stipulated that respondent had been served with Minimum Rate Tariff No. 2, Distance Table No. 4, and applicable supplements thereto.

A representative of the Commission's Field Section visited respondent's place of business and checked his records for the

periods January 1 through October 1961 and January 1962 through July 1962.

During said periods respondent transported 1,023 shipments. The underlying documents relating to 14 shipments were taken from respondent's files and submitted to the License and Compliance Branch of the Commission's Transportation Division. Based upon the data taken from said shipping documents, a rate study was prepared and introduced in evidence as Exhibit 5. The rate study shows undercharges in each instance, in general the result of the respondent's failure to assess off-rail charges where applicable.

The respondent presented evidence that some of the shipments shown in Exhibit 5 had been rebilled at the correct amount and some of the shippers have paid these bills. Respondent also testified that in one instance he had relied upon the knowledge of the shipper regarding whether the consignee was on or off rail; further, that on other shipments he had relied upon circulars distributed by railroad companies as to whether certain points were on rail or off rail. These circulars are not to be used for rating purposes and the actual physical facts at the location show that the rail rate cannot be applied.

In regard to Part 12 of Exhibit 5 the evidence presented was that the shipment had gone to a place other than that shown on the documents and respondent's rating was correct.

The undercharges shown in Exhibit 5 excluding Part 12 totaled \$712.92. ✓

After consideration the Commission finds that: ✓

1. Respondent operates pursuant to radial highway common carrier, highway contract carrier and petroleum contract carrier permits.

2. Respondent was served with appropriate tariffs and distance table.

3. Respondent charged less than the lawfully prescribed minimum rate in each instance as set forth in Exhibit 5 excluding Part 12.

Based upon the foregoing findings of fact, the Commission concludes that respondent violated Sections 3664, 3667 and 3737 of the Public Utilities Code.

O R D E R

IT IS ORDERED that:

1. Within twenty days after the effective date of this order, A. J. Barbero, doing business as Barbero Truck Lines, shall pay to this Commission a fine of \$1,000.

2. Respondent shall examine his records for the period from January 1, 1961, to the present time, for the purpose of ascertaining all undercharges that have occurred.

3. Within ninety days after the effective date of this order, respondent shall complete the examination of his records required by paragraph 2 of this order and shall file with the Commission a report setting forth all undercharges found pursuant to that examination.

4. Respondent shall take such action, including legal action, as may be necessary to collect the amounts of undercharges referred to hereinabove, together with those found after the examination

required by paragraph 2 of this order, and shall notify the Commission in writing upon the consummation of such collections.

5. In the event undercharges ordered to be collected by paragraph 4 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 19th day of November, 1963.

William L. Bernard
 President

Robert S. Mitchell

Everett W. Sage

George H. Brown

Fredrick B. Holshoff
 Commissioners