

ORIGINAL

Decision No. 66413

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 own motion into the operations,)
 rates, and practices of W. H.)
 MORSE TRUCKING, LTD.)

Case No. 7551
 Filed February 5, 1963

Donald Murchison, for respondent.
E. O. Blackman, for California Dump
 Truck Owners Association, interested
 party.
Lawrence Q. Garcia and Charles P.
Barrett, for the Commission staff.

O P I N I O N

On February 5, 1963, the Commission instituted its investigation into the operations, rates and practices of W. H. Morse Trucking, Ltd. (respondent) to determine if respondent, as a highway permit carrier, has violated Sections 3664, 3667, and 3737 of the Public Utilities Code, and Items 298-A and 365 of Minimum Rate Tariff No. 7; if it should be ordered to collect certain claimed undercharges; if it should be ordered to cease and desist from claimed unlawful practices or operations; and if any penalty should be imposed. The order of investigation also refers to certain city carrier transportation, but there is nothing in the record relative to city transportation.

Pursuant to the order instituting investigation, public hearings were held before Examiner Rogers in Los Angeles on July 23 and 24, 1963. On the latter day, the matter was argued and submitted.

All shipments are of rock products and all were carried in bottom-dump truck-trailer combinations.

One of the principal issues to be resolved is the interpretation of Item No. 296 of Section 3-A of Minimum Rate Tariff No. 7, which item reads as follows:

Application of Rates

"Rates in this section apply to transportation, including loading and unloading of carrier's equipment, which has been found by the Commission to be performed under all the following circumstances:

- a. Consignee's facilities permit receipt of shipments transported by dump truck-and-trailer units; adequate space for transfer of trailer bodies to dump trucks is available within 150 feet of dumping point of shipment.
- b. Consignee has received, or expects to receive, at least 1,000 tons of rock products per year.
- c. Consignee maintains personnel on duty, while transportation service is being furnished, for purpose of signing delivery tickets and other operations necessary to the receipt of the shipments.
- d. Consignee's facilities include space for bunker reception or stock piling of rock and/or sand in quantities of at least 50 tons at one time.
- e. Average loading and unloading time per dump-truck-and-trailer combination does not exceed, in total, 30 minutes per 24 tons."

A study of Decision No. 57675, dated December 2, 1958, which added Section 3-A to the tariff, discloses that the rates are from gravel production areas to certain specified delivery points. It also discloses that this section was designed to provide lower rates to a particular group of points of consignment, at which points the conditions listed in Item 296 were found to exist at the time the evidence relative to the establishment of Section 3-A rates was presented, and that the then existence of said items resulted in the authorization of lower rates than were available to other parties or points. The application of the Section 3-A rates so established is not contingent upon the continued existence of the circumstances set forth in Item 296.

The parties stipulated that at all times referred to herein, the respondent had valid radial highway common carrier and city carrier permits issued by this Commission and had been furnished Minimum Rate Tariff No. 7.

In June and July 1962, an associate transportation representative of this Commission examined approximately 1,500 of respondent's freight bills in its office, 5501 North Peck Road, El Monte, California. From this group, he selected 24 shipments and made photocopies of the freight bills therefor. These copies of the 24 freight bills are in evidence as Exhibit 1.

The 16 shipments, evidenced by parts 1 through 16 of Exhibit 1, originated at Century Rock Products, 5501 North Peck Road, El Monte, California, and the 8 shipments reflected by parts 17 through 24 of said exhibit originated at Star Rock Products, Santa Ana Canyon, Orange County, California. The 8 shipments, evidenced by parts 1 through 8, were delivered to San Gabriel Ready Mix, 505 Railroad Place, Inglewood, California; the 8 shipments reflected by parts 9 through 16 were delivered to Vernon Asphalt, 505 Railroad Place, Inglewood, California; and the 8 shipments, evidenced by Parts 17 through 24, were delivered to the Ball Road plant of Rodeffer Industries, in Orange County, California.

Section 3-A of Minimum Rate Tariff No. 7 provides that Section 3-A rates, where applicable, take precedence over Section 4 rates. The Section 3-A rates are obviously applicable to parts 1 through 16 of Exhibit 1, inasmuch as 505 Railroad Place, Inglewood, is a delivery point specified on page 38-U-9 of Section 3-A of Minimum Rate Tariff No. 7, and 5501 North Peck Road, El Monte, is in Production Area F in Los Angeles County. Inasmuch as the delivery point is specified in Section 3-A, the Section 3-A rates are applicable. Section 3-A rates, where applicable, exclude the application of rates in Sections 2, 3 and 4 of Minimum Rate Tariff No. 7.

The respondent's witness stated that the charges collected, as specified in parts 1 through 16 of Exhibit 1, were correct charges inasmuch as it could perform the services in a shorter time than specified in Section 3-A of Minimum Rate

Tariff No. 7 between the production area and the delivery point. In addition, the respondent contended that the Section 3-A provisions did not apply as the Item 296 provisions were not all complied with. We have heretofore ruled against this contention. It was conceded, however, that the production area and delivery point are specified in Section 3-A.

Based upon the evidence relative to parts 1 through 16 of Exhibit 1, we find that:

1. W. H. Morse Trucking, Ltd., is operating as a radial highway common carrier and has been served with Minimum Rate Tariff No. 7 and supplements thereto.

2. Respondent performed transportation services as a radial highway common carrier for Century Rock Products for less than the applicable rates and charges established by this Commission which resulted in undercharges as follows:

<u>Freight Bill No.</u>	<u>Date</u>	<u>Charge Collected</u>	<u>Correct Charge</u>	<u>Under- charge</u>
13828	3/ 2/62	\$ 87.30	\$103.36	\$ 16.06
13853	3/ 9/62	87.87	104.03	16.16
13861	3/10/62	95.70	113.30	17.60
13655	3/16/62	88.78	105.21	16.43
14774	4/10/62	93.28	109.18	15.90
14804	4/12/62	133.32	156.05	22.73
14932	4/18/62	137.28	160.68	23.40
15222	4/20/62	121.22	141.78	20.56
13147	3/ 1/62	95.96	113.61	17.65
13776	3/ 8/62	91.44	109.28	17.84
13794	3/12/62	89.87	106.40	16.53
13946	3/27/62	88.91	105.27	16.36
14411	4/ 3/62	137.06	160.42	23.36
14751	4/10/62	113.87	133.28	19.41
15214	4/19/62	115.54	135.24	19.70
15027	4/22/62	120.82	141.42	20.60
			Total Undercharges	\$300.29

In each of said items the respondent assessed a charge based on cents per ton assuming a shorter time in transit than the established time in transit set forth in First Revised Page 38-U-9 of Section 3-A of Minimum Rate Tariff No. 7.

Based upon the foregoing findings, the Commission concludes that Morse Trucking, Ltd., has violated Sections 3664, 3667 and 3737 of the Public Utilities Code of California, and Item 298-A of Section 3-A of Minimum Rate Tariff No. 7.

Parts 17 through 24 of Exhibit 1 refer to shipments of rock products between points in Anaheim transported under Section 4 of Minimum Rate Tariff No. 7.

On September 1, 1960, a letter agreement was entered into between Rodeffer Industries and the respondent, reading as follows:

"Be advised Rodeffer Industries elects to ship its sand, rock, gravel, and related items or commodities for which minimum rates are prescribed by the Minimum Rate Tariff No. 7 at the hourly rates specified in Section No. 4 of the Tariff. In the event these minimum hourly rates do not result in an amount equal to the revenue per ton on the hauls set forth on the attached schedule of tonnage rates from and to these designated points or zones, then the amounts provided for in the schedule resulting in a greater compensation than upon hourly rates, will be paid.

"You are requested to furnish shipping documents as required by Tariff No. 7, along with a statement of your charges containing a computation of the hourly rates under Section 4 of Tariff No. 7 and a computation of your charges under the attached schedule.

"You are further advised we will not maintain personnel on duty at all times, especially when night deliveries are made to our facilities,

to sign delivery tickets. In such event, you should furnish these tickets to our personnel at the earliest convenient time for signing.

"The foregoing notice shall be effective until you are otherwise notified."

The schedule referred to above is as follows:

Production Area F to Destinations Listed Below

San Gabriel Ready Mix Plants

Pasadena	\$.69½
Inglewood	.87
Los Angeles	.64
San Gabriel	.43

Griffith Company

9th Street Plant	.59
Jobsite Plant (Central Ave.)	.70
Western Aggregate to Pasadena plant	.25

There is no question that the rates in Section 4 of Minimum Rate Tariff No. 7 apply to the shipments referred to above. The only controversy is relative to the time in transit. The respondent stated that he can and does carry the shipments in the time shown on the freight bills. The staff contended it could not be done. The evidence of record relative to this issue fails to show that the traffic in question could not have been and cannot be transported within the times shown on the shipping documents. For this reason, the investigation relative to parts 17 through 24 of Exhibit 1 will be discontinued.

O R D E R

IT IS ORDERED that:

1. W. H. Morse Trucking, Ltd., respondent 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 respondent.

2. Respondent shall, on or before the thirtieth day after the effective date of this order, pay a fine of \$1,000.

3. Respondent shall examine its records for the period from September 1, 1960, 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 as required by paragraph 3 of this order, and shall file with the Commission a report setting forth all undercharges found pursuant to such examination.

5. Respondent shall take such action, including legal action, as may be necessary to collect the amount 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 this Commission.

7. The investigation as to parts 17 through 24 of Exhibit 1 is discontinued.

The Secretary of the Commission is directed to cause service of this order to be made upon respondent W. H. Morse Trucking, Ltd.

The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 9th day of December, 1963.

William L. Bennett
President

George H. Crow

Fredrick B. Halbluff
Commissioners