

ORIGINALDecision No. 66719

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of L. E. MUIR,
doing business as L. E. MUIR
TRUCKING SERVICE.

Case No. 7661

L. E. Muir, in propria persona.A. J. Lyon, for the Commission staff.O P I N I O N

On July 9, 1963, the Commission issued its order instituting an investigation into the operations, rates and practices of L. E. Muir, doing business as L. E. Muir Trucking Service.

A public hearing was held before Examiner Power on August 15, 1963, at Fresno.

Respondent presently conducts operations pursuant to radial highway common carrier and highway contract carrier permits. Respondent has a terminal in Ivanhoe, California. He owns and operates 26 pieces of equipment. His total gross revenue for the year 1962 was \$120,250.

On December 12, 1962, a representative of the Commission's staff visited respondent's place of business and checked his records for the period from March 1 through October 31, 1962, inclusive. During said period respondent transported 400 shipments. Photostats of underlying documents relating to 21 shipments were prepared from respondent's files. A rate study of these shipments was prepared and introduced in evidence as Exhibit No. 3. The evidence given by

the staff relates to one movement of sand and cement both in sacks, seven movements of cement in sacks, eleven of pipe, iron or steel, and two of pipe fittings, iron. Except for the eleven shipments of pipe, iron and steel, no extended comment is required. Suffice it to say that the staff made out its case on all the parts.

There was evidence in mitigation relating to the eleven pipe shipments from Fontana, San Bernardino County to Hillmaid (near Woodlake), Tulare County. Muir testified that the shipper obtained an incorrect rate quotation in writing from a railroad. The rate clerk quoted a rate applicable to bars, billets, blooms, ingots, rods and slabs, but not to pipe. In the spring of 1963 there was correspondence between the shipper and railroad leading to a correct quotation which was 9 cents per cwt. higher. The railroad correcting letter was dated June 6, 1963. On June 7, Muir submitted deficiency billings to the shipper amounting to \$1,219.40. These were collected. The June 7 statement, a copy of which is in evidence, covered thirty-two movements from January 18, 1962 to May 21, 1963, inclusive. All eleven movements included in the staff evidence are included in this billing.

On the basis of the evidence before us, we have determined that this traffic should be excluded from the reckoning when the punishment is calculated.

According to the Commission records respondent was sent an undercharge letter on June 23, 1960.

After consideration the Commission finds that:

1. Respondent operates pursuant to radial highway common carrier and highway contract carrier permits.
2. Respondent was served with appropriate tariffs and distance tables.

3. Respondent charged less than the lawfully prescribed minimum rate in the instances set forth in Exhibit 3. The total undercharges shown in staff Exhibit 3 amounted to \$638.50.^{1/}

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

The order which follows will direct respondent to review his records to ascertain all undercharges that have occurred since January 1, 1962 in addition to those set forth herein. The Commission expects that when undercharges have been ascertained, respondent will proceed promptly, diligently and in good faith to pursue all reasonable measures to collect them. The staff of the Commission will make a subsequent field investigation into the measures taken by respondent and the results thereof. If there is reason to believe that the respondent, or his attorney, has not been diligent, or has not taken all reasonable measures to collect all undercharges, or has not acted in good faith, the Commission will reopen this proceeding for the purpose of formally inquiring into the circumstances, and for the purpose of determining whether further sanctions should be imposed on respondent.

O R D E R

IT IS ORDERED that:

1. On or before the twentieth day after the effective date of this order, respondent shall pay to this Commission a fine of \$350.
2. Respondent shall examine his records for the period from January 1, 1962 to the present time, for the purpose of ascertaining all undercharges that have occurred.

^{1/} The sum of \$638.50 includes \$427.47 of undercharges on the 11 pipe shipments concerning which there was mitigating evidence. Only \$211.03 of the undercharges shown were considered in calculating the fine.

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 set forth herein, 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 28th day of January, 1964.

Hallegraef Beunck
President
[Signature]
[Signature]
Frederick B. Holbrook
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Commissioners

Commissioner George G. Grover did not participate in the disposition of this proceeding.