

Decision No. 66899**ORIGINAL**

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's )  
 own motion into the operations, rates )  
 and practices of ELMER WARKENTIN and )  
 WALTER WARKENTIN, a copartnership. )

Case No. 7708  
 (Filed September 10, 1963)

Elmer Warkentin and Walter Warkentin, in  
propriae personae.

B. A. Peeters and Charles Barrett, for  
the Commission staff.

O P I N I O N

By its order dated September 10, 1963, the Commission issued its order instituting an investigation into the operations, rates and practices of Elmer Warkentin and Walter Warkentin.

A public hearing was held before Examiner Power on December 12, 1963, at Bakersfield.

Respondents presently conduct operations pursuant to a radial highway common carrier permit. Respondents have no terminal. They own and operate nine units of equipment. Their total gross revenue for the year, October 1, 1962 to September 30, 1963, was \$57,190. Copies of appropriate tariff and distance table were served upon respondents.

On March 20, 22 and 25, 1963, a representative of the Commission's field section visited respondents' place of business and checked their records for the period from August 1 through December 31, 1962, inclusive. During said period respondents transported 471 shipments. The underlying documents relating to 16 shipments were taken from respondents' 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. Said exhibit reflects undercharges in the amount of \$162.39.

The staff also presented evidence of 36 similar violations. These totaled \$372.10. The total for both sets was \$534.49. In addition the staff showed that the respondents failed to issue shipping documents on shipments of used empty pallets, returning.

The respondents are primarily haulers of aggregates in hopper bottomed equipment. However, they have one set of flat bed doubles with which they hauled, primarily, concrete building blocks. It was in this operation that all 52 of the violations noted in the evidence occurred. This commodity is subject to the rates, rules and regulations in Minimum Rate Tariff No. 2.

According to the Commission records respondents were sent an undercharge letter on October 30, 1961.<sup>1/</sup> On August 2, 1961 respondents were admonished in respect of Item No. 255 of Minimum Rate Tariff No. 2.

After consideration the Commission finds that:

1. Respondents operate pursuant to Radial Highway Common Carrier Permit No. 10-7680.
2. Respondents were served with appropriate tariffs and distance table.
3. Respondents charged less than the lawfully prescribed minimum rate in the instances as set forth in Exhibit 5 and similar transactions in the amount of \$534.49.
4. Respondents failed to issue shipping documents as required by Item No. 255 of Minimum Rate Tariff No. 2.

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<sup>1/</sup> As a result of this letter respondents, after audit, collected \$751.62. The undercharges noted in the letter amounted, in all, to \$125.33.

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

The order which follows will direct the respondents to review their records to ascertain all undercharges that have occurred since August 1, 1962 in addition to those set forth herein. The Commission expects that when undercharges have been ascertained, respondents 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 the respondents and the results thereof. If there is reason to believe that respondents, or their attorney, have not been diligent, or have not taken all reasonable measures to collect all undercharges, or have 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.

O R D E R

IT IS ORDERED that:

1. Respondents shall examine their records for the period from August 1, 1962 to the present time, for the purpose of ascertaining all undercharges that have occurred.
2. Within ninety days after the effective date of this order, respondents shall complete the examination of their records required by paragraph 1 of this order and shall file with the Commission a report setting forth all undercharges found pursuant to that examination.

3. Respondents 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 1 of this order, and shall notify the Commission in writing upon the consummation of such collections.

4. In the event undercharges ordered to be collected by paragraph 3 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.

5. Respondents shall pay a fine of \$1,000 to this Commission on or before the twentieth day after the effective date of this order.

The Secretary of the Commission is directed to cause personal service of this order to be made upon respondents. The effective date of this order shall be twenty days after the completion of such service.

Dated at Los Angeles, California, this 3rd day of MARCH, 1964.

Ernest W. King President  
George T. Trover  
Frederic B. Holbrook

Commissioners  
Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.

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