

Decision No. 66900

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 BOBBY JOE
TAYLOR and ERMINA FRANCES NAVARRE,
copartners, doing business as
TAYLOR TRUCKING COMPANY.

Case No. 7680

Mack, Bianco, King, Eyherabide, Means &
Cooney by R. S. Cooney, for respondents.
Elmer Sjostrom and Charles Barrett, for
the Commission staff.

O P I N I O N

By its order dated August 13, 1963, the Commission instituted an investigation into the operations, rates, and practices of Bobby Joe Taylor and Ermina Frances Navarre, doing business as Taylor Trucking Company.

A public hearing was held before Examiner Porter on December 19, 1963, at Bakersfield, on which date the matter was submitted. ✓
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Respondents presently conduct operations pursuant to a radial highway common carrier permit.

Respondents have a terminal in Bakersfield, California. They own and operate two tractors, two bobtail trucks and three trailers. Their total gross revenue for the fourth quarter of 1962 and the first three quarters of 1963 was \$23,796.

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

The Commission's staff presented evidence covering a period of the carrier's operations during June 1 through August 31, 1962. Four transactions, representative of thirty-eight wherein respondents were allegedly buying and selling ice, along with eleven shipments of ice, representative of one hundred and twenty, were

analyzed. Exhibit 3 shows that if the four alleged buy-and-sell shipments were treated as for-hire transportation there would be an undercharge in each instance. Further, in the 11 other shipments there was an undercharge in each instance.

The undercharges resulted from respondents' failure to observe documentation requirements and the time limit for pickup of multiple lot shipments, as provided in Minimum Rate Tariff No. 2.

Respondents did not take issue with the rating of the shipments by the Rate Analysis Unit, as presented in Exhibit No. 3. In the alleged buy-and-sell transactions, respondents had purported to buy ice at the time of pickup and to sell it at the time of delivery, with the intervening haul being treated as proprietary transportation rather than the for-hire transportation which in fact it was; respondents' explanation at the hearing was that in this respect they had merely continued a practice started by a carrier which had performed the service before them.

After consideration the Commission finds that:

1. The alleged "buy-and-sell" transactions hereinabove referred to were not in fact purchase and sale transactions but were in fact transportation of property for compensation on the public highways subject to the provisions of the Highway Carriers' Act (Sections 3501-3809 of the Public Utilities Code).

2. Said transactions constituted a device whereby respondents, in violation of Section 3668 of the Public Utilities Code, have transported property as a for-hire carrier at rates less than the applicable minimum rates and charges established by this Commission.

3. Respondents assessed and collected charges less than the applicable charges established by this Commission in Minimum Rate Tariff No. 2 in violation of Section 3667 of the Public Utilities Code as set forth in Exhibit No. 3, with resulting undercharges which total \$949.34.

The Commission concludes that respondents have violated Sections 3667 and 3668 of the Public Utilities Code.

The order which follows will direct respondents to review their records to ascertain all undercharges that have occurred since June 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 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. Within twenty days after the effective date of this order respondents shall pay to this Commission a fine of Two Thousand Dollars.
2. Respondents shall cease and desist from using fictitious "buy-and-sell" transactions, such as those disclosed herein, as a device for evading the minimum rate orders of this Commission.
3. Respondents shall examine their records for the period from June 1, 1962 to the present time, for the purpose of ascertaining all undercharges that have occurred.
4. Within ninety days after the effective date of this order, 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 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, 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.

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.

President
George L. Trover
Fredrick C. Holloff

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.