

Decision No. 66960

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
practices, rates and charges of
ROSSI TRANSPORTATION, INC., a
corporation.

Case No. 7710

Joe J. Rossi and Thomas J. Hays, for respondent.

William C. Bricca and Frank O'Leary, for the
Commission staff.

O P I N I O N

On September 10, 1963, the Commission issued its order instituting an investigation into the operations, practices, rates and charges of Rossi Transportation, Inc., a California corporation, for the purpose of determining whether respondent has violated Sections 453, 494, 3664, 3667 and 3737 of the Public Utilities Code, by charging improper rates for the transportation of property.

A public hearing was held before Examiner Fraser on November 26, 1963, at Fort Bragg. It was stipulated that respondent conducts operations as a highway common carrier pursuant to a certificate of public convenience and necessity granted by Decision No. 60268, dated June 14, 1960, in Application No. 41955; as a petroleum irregular route carrier pursuant to a certificate of public convenience and necessity granted by Decision No. 49527, dated January 5, 1954, in Application No. 34913; and also as a highway permit carrier under Radial Highway Common Carrier Permit No. 23-750 and Highway Contract Carrier Permit No. 23-751. It was further stipulated that respondent was served copies of Minimum Rate Tariff No. 2, Minimum Rate Tariff

No. 10 and Distance Table No. 4, along with the pertinent amendments and supplements thereto, prior to the transportation referred to herein.

A representative of the Commission's field division testified that he visited the respondent's Fort Bragg office on January 9 and 10, 1963 and on May 8, 1963, when he reviewed all transportation performed by respondent during the months of October 1962 through March of 1963, inclusive. A few shipments hauled in August of 1962 also were checked. He testified he made true and correct photostatic copies of 40 of respondent's freight bills along with various other documents which were attached to or filed with them and that the copies of these freight bills and documents are all in Exhibit No. 1.

A rate expert from the Commission staff testified that he took the set of documents contained in Exhibit No. 1, along with other information presented by the prior witness, and formulated Exhibit No. 2, which gives the rate charged by respondent and the rate computed by the Commission staff on each of the 40 freight bills included in Exhibit No. 1. He stated the rates assessed, charged and collected by respondent on the 40 freight bills in Exhibit No. 1 are lower than the lawful minimum rates allowed by Minimum Rate Tariff No. 2 and the other applicable tariffs. The witness stated the undercharges in Exhibit No. 2 total \$835.62.

A staff witness testified that Commission records show respondent's gross revenue for the four quarters ending September 30, 1963 was \$371,857, with \$84,836 for the last quarter of 1962 and \$70,948, \$108,430 and \$107,643 for the first, second and third quarters, respectively, of 1963. The witness stated the records further show that on May 8, 1963 respondent had fifteen drivers, two mechanics, two dispatchers, a rate clerk and an office manager, working in respondent's Fort Bragg and Ukiah terminals and out of an

office and yard respondent maintains in Richmond; also that respondent operates with twenty-two power vehicles and forty-three trailers.

Testimony for the respondent was presented by the president of the corporation and by its office manager. The office manager testified he is an accountant and has been employed by respondent since April 1, 1962. He stated he was employed to handle the books of the company, but he is now also in charge of rating since it is very difficult to obtain good clerical help in Fort Bragg. He testified that the forty counts herein represent the errors of the respondent in rating three thousand freight bills, which were issued during the period of the staff audit. The undercharges total only \$835.62 out of approximately \$155,000 worth of business. He testified that over thirty percent of respondent's business is the hauling of petroleum and no undercharges were found by the staff on this phase of respondent's operations. The witness further testified that he checked the ratings of respondent on the forty parts of Exhibit No. 1 and discovered that on several occasions respondent's rate man miscalculated the mileage between origin and destination and thereby chose his distance rate from the wrong mileage bracket; that on some of the counts the rate charged was taken from the wrong column on the tariff page; and that on other counts errors were made due to the rater's complete unfamiliarity with the applicable tariffs.

After consideration the Commission finds that:

1. Respondent operates under certificates as a petroleum irregular route carrier and as a highway common carrier; also as a radial highway common carrier and a highway contract carrier.
2. Respondent was served with the appropriate tariffs and distance table.
3. Respondent charged less than the lawfully prescribed minimum rate in the amount of \$835.62, as set forth in Exhibit No. 2.

Based upon the foregoing findings of fact, the Commission concludes that respondent violated Sections 453, 494, 3664, 3667 and 3737 of the Public Utilities Code.

The order which follows will direct respondent to review its records to ascertain all undercharges that have occurred since October 1, 1962 in addition to those set forth in Exhibit No. 2. 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 its attorney has not been diligent, 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.

O R D E R

IT IS ORDERED that:

1. Within twenty days after the effective date of this order Rossi Transportation, Inc. shall pay to this Commission a fine of \$1,000.
2. Respondent shall examine its records for the period from October 1, 1962 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 its 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 17th day of March, 1964.

Hollingsworth
President
George E. Grover
Fredrick B. Holdhoff

Commissioner Everett C. McKeage, being necessarily absent, did not participate in the disposition of the ~~Commissioners~~