

ORIGINAL

66992

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations, rates,
charges and practices of A & E READIMIX
CORPORATION, a corporation.

Case No. 7757

Wayne R. Sherwood, for respondent.
Robert C. Marks, for the Commission staff.

C P I N I O N

By its order dated October 29, 1963, the Commission instituted an investigation into the operations, rates, charges and practices of A & E Readimix Corporation.

A public hearing was held before Examiner Porter on January 22, 1964, at Eureka, on which date the matter was submitted.

Respondent presently conducts operations pursuant to a radial highway common carrier permit.

Respondent has a terminal in Arcata, California. It owns and operates one tractor, one semitrailer and one pull trailer. Its total gross revenue for the fourth quarter of 1962 and the first three quarters of 1963 was \$27,803.

It was stipulated that respondent had been served with Minimum Rate Tariffs Nos. 2 and 14, Distance Table No. 4 and applicable supplements thereto.

The Field Section of the Commission's staff presented evidence covering a period of the carrier's operations during September 1962 through May 17, 1963. During this period the respondent transported 74 shipments. Copies of documents relating

to 18 shipments were taken from respondent's files and, based upon the data taken from said shipping documents, a rate study was prepared and introduced in evidence as Exhibit 2. The rate study shows undercharges in each instance.

The field representative also testified there were 7 shipments similar to the shipment rated as Part 14 and 1 similar to the shipment rated as Part 3 in Exhibit 2.

The respondent did not take issue with the rate statement, Exhibit 2, but presented testimony that the shipments here in question (lumber) were not the main part of respondent's business which was cement hauling and that the undercharges were due to lack of knowledge of the correct rates and method of computing rates.

After consideration the Commission finds that:

1. Respondent operated pursuant to a radial highway common carrier permit.
2. Respondent was served with appropriate tariffs and distance tables.
3. Respondent charged less than the lawfully prescribed minimum rates in the instances as set forth in Exhibit 2, which totaled \$245.76.

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 its records to ascertain all undercharges that have occurred since September 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 its 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.

O R D E R

IT IS ORDERED that:

1. Within twenty days after the effective date of this order respondent shall pay to this Commission a fine of \$1,500.
2. Respondent shall examine its records for the period from September 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 amount 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, but unless first authorized by the Commission, in writing, respondent shall not compromise any claims for undercharges nor stipulate as to any judgment in connection therewith.

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

Dated at San Francisco, California, this 24th day of MARCH, 1964.

William L. Beune
President

[Signature]

George E. Trover

Frederick B. Holmberg

Commissioners

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