

Decision No. 67233

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own
 motion into the operations, practices,
 rates, charges and contracts of CORONA
 BOX AND LUMBER CO., a corporation;
 INTERSTATE CONTAINER CORPORATION, a
 corporation; ROSS TRUCKING COMPANY, a
 corporation; CALVIN O. RICE; STANLEY W.
 HINKLE; BERT V. HARRIS; A. W. HAYS
 TRUCKING, INC., a corporation.

Case No. 7590

Marvin Handler and E. James McGuire, for Corona
 Box and Lumber Co., and Interstate Container
 Corporation, respondents.
Lawrence Q. Garcia and F. J. O'Leary, for the
 Commission staff.

O P I N I O N

On April 9, 1963 the Commission instituted its investi-
 gation into the operations, practices, rates, charges and con-
 tracts of Corona Box and Lumber Co., a corporation; Interstate
 Container Corporation, a corporation; Ross Trucking Company, a
 corporation; Calvin O. Rice; Stanley W. Hinkle; Bert V. Harris;
 and A. W. Hays Trucking, Inc., a corporation. The purpose of
 this investigation is to determine:

1. Whether Corona Box and Lumber Co., hereinafter called
 Corona, and Interstate Container Corporation, hereinafter called
 Interstate, are jointly owned and controlled and have violated
 Sections 3664, 3667 and 3737 of the Public Utilities Code by
 hauling each other's property for less than the applicable rates
 in Minimum Rate Tariff No. 2 through the use of subhaulers.

2. Whether respondents Corona and Interstate have violated
 Section 3737 of the Public Utilities Code and General Order No. 102-A

by not preparing subhauling agreements prior to or within five days after the commencement of subhaul service.

3. Whether respondents Corona and Interstate have violated Section 3737 of the Public Utilities Code by failing to collect freight charges as required by Item No. 250-A of Minimum Rate Tariff No. 2.

4. Whether respondent Interstate has violated Section 3737 of the Public Utilities Code and Item No. 70-H of Minimum Rate Tariff No. 2 by failing to assess charges on the proper weight of shipments as required by Item No. 70-H.

5. Whether the corporate entities of Corona and Interstate have been used as a device whereby transportation of property within this State is performed for a shipper at rates less than those prescribed in Minimum Rate Tariff No. 2 and supplements thereto.

6. Whether respondents Corona and Interstate have violated the provisions of their operating permits.

7. Whether respondents Ross Trucking Company, Rice, Hinkle, Harris, and A. W. Hays Trucking, Inc., while acting as subhaulers for respondent Corona, have in fact transported property for respondent Interstate at rates less than those prescribed in Minimum Rate Tariff No. 2.

8. Whether respondents Ross Trucking Company, Rice, Hinkle, Harris, and A. W. Hays Trucking, Inc., while acting as subhaulers for respondent Interstate, have in fact transported property for respondent Corona at rates less than those prescribed in Minimum Rate Tariff No. 2.

Public hearing was held before Examiner Fraser on February 4, 1964 in San Francisco and the matter was submitted.

It was stipulated that Corona operates under Radial Highway Common Carrier Permit No. 52-485 and that Interstate operates under Highway Contract Carrier Permit No. 52-504; also that Corona and Interstate were served with copies of Minimum Rate Tariff No. 2 and Distance Table No. 4 prior to the transportation referred to in the exhibits filed herein. It was stipulated that there is a community of interest between Corona and Interstate and that neither corporation was organized to evade the law or Public Utilities Commission regulations. The record shows that the permits held by Corona and Interstate are worded so that neither one can employ subhaulers to haul its own goods, or the goods of its customers without paying the full minimum rate. It was further stipulated that both permits may be amended to provide that the full minimum rate must be paid by Corona or Interstate, if either employs subhaulers to haul the goods of the other.

A Commission representative testified that he visited the office in Red Bluff used jointly by Corona and Interstate on June 13 and 14, 1962 and on August 9 and 10, 1962. He made copies of documents on some of the transportation performed by both Corona and Interstate during the period of January through July, 1962. He authenticated Exhibits Nos. 1 (on Interstate) and 2 (on Corona) which were placed in evidence and stated he found no written subhaul agreements in the records of Corona or Interstate. He testified that Commission records show that each of the other respondents was served with copies of Minimum Rate Tariff No. 2 and Distance Table No. 4 prior to the transportation described in the exhibits on file herein and that they are operating under the following permits:

1. Ross Trucking Company, a corporation
P. O. Box 107, Red Bluff, California
Radial Highway Common Carrier Permit No. 52-405
Highway Contract Carrier Permit No. 52-424
2. Calvin O. Rice
1225 Willis Street, Redding, California
Radial Highway Common Carrier Permit No. 45-937
3. Stanley W. Hinkle
Route 2, Box 2690, Red Bluff, California
Radial Highway Common Carrier Permit No. 52-563
4. Bert V. Harris
Route 1, Box 648, Red Bluff, California
Radial Highway Common Carrier Permit No. 52-558,
revoked January 22, 1963.
5. A. W. Hays Trucking, Inc., a corporation
P. O. Box 98, Woodland, California
Radial Highway Common Carrier Permit No. 52-18
Highway Contract Carrier Permit No. 52-34
City Carrier Permit No. 57-742.

He further testified that Commission records show the following freight carrier revenue for Corona and Interstate. Interstate earned gross revenues of \$7,953 in the fourth quarter of 1962; \$4,800 in the first quarter of 1963; \$14,055 in the second quarter of 1963; and \$11,086 in the third quarter of 1963, for a total of \$37,894; Corona's gross revenues for the fourth quarter in 1962 was \$21,731; first quarter of 1963, \$22,256; second quarter of 1963, \$25,774; and third quarter of 1963 was \$23,066, for a total of \$91,827. On January 1, 1963 Commission records show Interstate was operating three trucks and three trailers and Corona was operating four trucks and four trailers.

A Commission staff rate expert authenticated Exhibits Nos. 3 (with 10 parts) and 4 (with 16 parts), which were received in evidence. Exhibit No. 3 refers to transportation performed by Interstate and Exhibit No. 4 to transportation performed by Corona. He testified the rates paid to the subhaulers employed by Corona and Interstate were less than the lawful minimums provided

in Minimum Rate Tariff No. 2 and that respondents Corona and Interstate failed to observe the documentation requirements of Minimum Rate Tariff No. 2 and the time limit for pickups of multiple lot shipments. Respondents disagreed with only three of the staff ratings. Interstate challenged the staff rating on Parts 7, 9 and 10 of Exhibits Nos. 1 and 3. Interstate rated each of the three parts as a single shipment. The weight was computed as 40,500 pounds per load. Because of failure to comply with Item 85 of Minimum Rate Tariff No. 2 the staff rating is based on information taken from weight certificates found in the records of the subhauler (Calvin Rice) who delivered the merchandise. Respondents alleged that the weight certificates were not authenticated and that they were not able to cross-examine as to the origin or content of the certificates. The staff rate expert testified that if the weights from respondent Interstate documents were used each load would be rated on a minimum of 44,000 pounds.

The office manager for both Corona and Interstate testified as follows: Corona was organized prior to 1948 for the manufacture of wooden boxes; Interstate was formed in 1954 for the manufacture of Kravencer (a wood veneer product) and now makes plywood; Corona and Interstate each originally purchased a truck for proprietary hauling; some back hauls were available so Corona obtained a radial permit in 1957 and Interstate a highway contract carrier permit in 1959; during this period each of the two respondents hauled for the other; their permits were amended in February of 1961 to provide that if either (Corona or Interstate) respondent hauled its own goods by employing subhaulers, the latter must be paid the full minimum rate and considered as the principal carrier; the permits were amended as suggested by a Commission representative who checked

their records early in 1961; this representative did not comment on the fact that each respondent occasionally hauled for the other; a further investigation of their records was made in June and August of 1962, by a Commission representative who failed to advise them that they were using subhaulers illegally; they therefore continued to use subhaulers when their own trucks were not available until they received copies of the present Order Instituting Investigation, when they were advised by their attorney to stop the practice. The Commission counsel and the attorney for Corona and Interstate made closing statements. None of the other respondents presented any evidence or argument and none was present at the hearing.

After consideration the Commission finds that:

1. Respondent Interstate Container Corporation operates under Highway Contract Carrier Permit No. 52-504.
2. Respondent Corona Box and Lumber Co. operates under Radial Highway Common Carrier Permit No. 52-485.
3. Respondents Ross Trucking Co., a corporation; Calvin O. Rice; Stanley W. Hinkle; Bert V. Harris; and A. W. Hays Trucking, Inc., a corporation, held permits authorizing them to transport property over the public highways for compensation, at the time the transportation involved herein took place.
4. Respondents were served with the appropriate tariffs and distance tables.
5. Respondents Corona and Interstate failed to prepare subhaul agreements prior to or within five days after the commencement of subhaul service.
6. The record does not establish that respondent Interstate assessed charges on improper weights and the differences

shown in Parts 7, 9 and 10 of Exhibit No. 3 will be reduced from \$1,007.54 to \$893.48.

7. Respondents Corona and Interstate have not violated the provisions of their operating permits.

8. The record fails to establish that respondents Interstate and Corona failed to collect freight charges as required by Item No. 250 of Minimum Rate Tariff No. 2.

9. There exists such a unity of ownership, interest, and control between the respondents Corona and Interstate that they constitute in fact and in law the same entity and the practice of each in using subhaulers to haul for the other at rates less than the lawful minimum constituted a device by means of which the Public Utilities Code was violated and which device enabled them to secure transportation service at less than the lawful rate.

10. The subhaulers employed by Corona to haul the products of Interstate and the subhaulers employed by Interstate to haul the products of Corona were in fact prime carriers who received less than the minimum rates established by the Commission in Minimum Rate Tariff No. 2.

11. Respondents Ross Trucking Company, Rice, Hinkle, Harris, and A. W. Hays Trucking, Inc., while acting as subhaulers for respondents Corona and Interstate, as previously described, have transported property at rates less than those prescribed in Minimum Rate Tariff No. 2, which resulted in the following undercharges:

On Interstate Container Corporation transportation.

<u>Part No.</u> <u>(Exhibit 3)</u>	<u>Freight</u> <u>Bill No.</u>	<u>Date</u>	<u>Subhauler</u>	<u>Under-</u> <u>charge</u>
1	4462	Feb. 9, 1962	Stanley Hinkle	\$75.20
2	4461	Feb. 10, 1962	Bert Harris	37.60
3	4464	Feb. 6, 1962	Bert Harris	75.20
4	4466	Mar. 30, 1962	Bert Harris	71.10
5	4475	Apr. 1962	Bert Harris	128.16
6	4427	Not shown	Bert Harris	150.40
7	4457	Mar. 17, 1962	Calvin O. Rice	75.20
8	4478 & 4479	April 1962	Calvin O. Rice	165.23
9	4499	Not shown	Calvin O. Rice	376.00
10	7688-7689	July 1962	Calvin O. Rice	<u>442.28</u>

Total Undercharges of \$ 1,596.37

On Corona Box and Lumber Co. transportation.

<u>Part No.</u> <u>(Exhibit 4)</u>	<u>Freight</u> <u>Bill No.</u>	<u>Date</u>	<u>Subhauler</u>	<u>Under-</u> <u>charge</u>
1	4453	Jan. 17, 1962	Ross Trucking Co.	\$74.95
2	4452	Jan. 10, 1962	Ross Trucking Co.	75.70
3	4451	Jan. 20, 1962	Ross Trucking Co.	59.14
4	4456	Not shown	Bert Harris	75.20
5	4458	Feb. 14, 1962	Bert Harris	143.36
6	4463	Feb. 26, 1962	Bert Harris	55.50
7	4471	Mar. 7, 1962	Bert Harris	79.94
8	4472	Apr. 4, 1962	Bert Harris	62.57
9	4473	Apr. 4, 1962	Bert Harris	63.33
10	4474	Apr. 18, 1962	Bert Harris	59.79
11	4480	Apr. 30, 1962	Bert Harris	235.73
12	4485	May 23, 1962	Bert Harris	84.03
13	4484	May 10, 1962	Bert Harris	65.35
14	4496	June 22, 1962	Hays Trucking, Inc.	77.07
15	4497	June 24, 1962	Hays Trucking, Inc.	56.59
16	4498	June 25, 1962	Hays Trucking, Inc.	<u>38.16</u>

Total Undercharges of \$ 1,306.41

12. Respondents Corona and Interstate were twice investigated by representatives of this Commission and were never advised that the practice of using subhaulers to haul for each other, at less than the minimum rate, was probably illegal.

Based upon the above findings we conclude that:

1. Respondent Interstate has violated Sections 3664, 3667 and 3737 of the Public Utilities Code.

2. Respondent Corona has violated Sections 3664, 3667 and 3737 of the Public Utilities Code.

3. Respondents Ross Trucking Company, Rice, Hinkle, Harris, and A. W. Hays Trucking, Inc., have violated Section 3667 of the Public Utilities Code.

We will impose a fine of \$250 each on respondents Corona and Interstate and they will be ordered to pay to the subhaulers used to haul the products of the other the full minimum rate.

O R D E R

IT IS ORDERED that:

1. On the effective date of this decision the Secretary of this Commission is directed to cause to be amended the permits of respondents Corona Box and Lumber Co., a corporation, and Interstate Container Corporation, a corporation, by providing that when either respondent uses subhaulers to transport the goods of the other respondent, these subhaulers will be considered the prime carriers and will be paid the applicable minimum rate.

2. Respondents Corona Box and Lumber Co., and Interstate Container Corporation shall review their records on all transportation performed wherein either respondent hauled for the other by using subhaulers to perform the actual transportation between January 1, 1962 and the effective date of this order. Respondents Corona and Interstate shall then pay to such furnishers of transportation the difference between the lawful minimum rate and charge applicable to such transportation and the amount previously paid to such furnishers of transportation ostensibly as subhaulers.

3. Respondents Ross Trucking Company, a corporation; Calvin C. Rice; Stanley W. Hinkle; Bert V. Harris; and A. W. Hays Trucking, Inc., a corporation, shall review their records relating

to all transportation wherein they were engaged by Corona Box and Lumber Co. to transport property in behalf of Interstate Container Corporation or by Interstate to transport property in behalf of Corona Box and Lumber Co. between January 1, 1962, and the effective date of this order for the purpose of ascertaining the lawful minimum rates for such transportation and shall take such action, including legal action, as may be necessary to collect the difference between the lawful minimum rates and the amounts they received for such transportation.

4. Within ninety days after the effective date of this order, respondents shall complete the examination of their records required by paragraphs 2 and 3 of this order and shall file with the Commission a report setting forth all undercharges found pursuant to such examination.

5. In the event charges to be collected as provided by paragraph 3 of this order, or any part thereof, remain uncollected one hundred twenty days after the effective date of this order, Ross Trucking Company, Calvin O. Rice, Stanley W. Hinkle, Bert V. Harris, and A. W. Hays Trucking, Inc., shall institute legal proceedings to effect collection and shall submit to the Commission on the first Monday of each month a report of the charges remaining to be collected and specifying the action taken to collect such charges and the result of such, until such charges have been collected in full or until further order of this Commission.

6. Respondents Corona and Interstate shall each pay a fine of \$250 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 each respondent. The effective date of this order as to each respondent shall be twenty days after the completion of such service upon such respondent.

Dated at San Francisco, California, this 19th day of May, 1964.

William A. Burns
President
Robert W. [unclear]
George T. Trover
Fredrick B. Holcliff
Commissioners