

**ORIGINAL**Decision No. 67272

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  
H & L TRANSPORT, INC., a corporation.

Case No. 7704

J. L. Ferry and Lois B. Green, for respondent.  
E. A. Peeters, for the Commission staff.

O P I N I O N

By its order dated September 10, 1963, the Commission instituted an investigation into the operations, rates and practices of H & L Transport, Inc., a corporation.

A public hearing was held before Examiner Power on February 20, 1964, at Fresno.

Respondent presently conducts operations pursuant to a radial highway common carrier permit. Respondent has a terminal in Tulare, California. It owns and operates 24 pieces of equipment. It employs 8 drivers and 2 part-time office workers. Its total gross revenue for the year ended September 30, 1963 was \$311,255. Copies of the appropriate tariff and distance tables were served upon respondent.

On January 15, 16 and 17 and May 10, 1963, a representative of the Commission's Field Section visited respondent's place of business and checked its records for the period from August 1, 1962 through January 10, 1963, inclusive. During said period respondent transported about 500 shipments. The underlying documents relating to 26 shipments were taken from respondent's 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 4. Said exhibit reflects undercharges in the amount of \$762.29.

The basic charge in this proceeding is that respondent has violated Sections 3664, 3667 and 3737 of the Public Utilities Code.

The staff presented two exhibits. One was a foundation exhibit consisting of documents. The second was a rate exhibit. Each is divided into 26 parts with the parts in one corresponding to the parts in the other that have the same number. These exhibits show four instances of noncompliance with split delivery provisions and four instances of noncompliance with split pickup provisions of Minimum Rate Tariff No. 3-A. In two instances minimum weights necessary for the application of truckload rates were not observed. In one instance the only violation was minimum rates. There were three instances of unlawful consolidation. There were 16 instances in which Distance Table No. 4 was not complied with. In a number of these the exact violation cannot be determined since in some it may be that the wrong point of origin was used. Of course failure to select correct mileage brackets leads to minimum rate violations which occurred in all of these cases. Some parts of the exhibits presented more than one type of violation. Fifteen of the parts dealt with the rating of livestock shipments. Eleven involved shipments of cotton seed meal or hulls, minimum rates for which are prescribed in Minimum Rate Tariff No. 2. All the allegations of the staff were fully sustained by the evidence.

The evidence shows for example that respondent attempted to consolidate shipments when more than one party was paying the

charges. There were documentary violations. Respondent not only had difficulty with the two tariffs but also with the distance table. In some instances minimum weights were not protected.

It is a mitigating circumstance that definitely less than ten percent of respondent's shipments showed violations. The staff witness observed only the 26 proved violations in the bills he reviewed. He described these as being about three-fourths of the total, that is, about 375 bills. In at least one instance (part 3, freight bill No. 1117) an obvious clerical error was made.

Respondent's secretary made an unsworn statement. The purport of it was that these were mistakes, not deliberate violations. This may well be true. The staff rate witness believed that all eleven of the fced shipments (parts 16-26 inclusive) involved miscalculations of distance.

The past history of this carrier shows that an admonishment conference was held on July 11, 1961 and an undercharge letter was issued on November 13, 1961. This letter listed eight undercharges. The admonishment conference covered most of the tariff items which respondent is accused of similarly violating in this case.

The staff recommended that respondent be required to audit its books and report results of such audit to the Commission; that it be required to collect undercharges; and that it be fined \$1,000.

After consideration the Commission finds that:

1. Respondent operates pursuant to a radial highway common carrier permit.
2. Respondent was served with the appropriate tariffs and distance table.

3. Respondent charged less than the lawfully prescribed minimum rate in the instances as set forth in Exhibit 4, resulting in undercharges in the amount of \$762.29.

Based upon the foregoing findings of fact, the Commission concludes that respondent violated Sections 3664, 3667 and 3737 of the Public Utilities Code and should pay a fine in the amount of \$1,000.

The order which follows will direct respondent to review its 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, respondent will proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges. The Commission staff will make a subsequent field investigation into the measures taken by respondent and the results thereof. If there is reason to believe that 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. Respondent shall pay a fine of \$1,000 to this Commission on or before the twentieth day after the effective date of this order.
2. Respondent shall examine its records for the period from August 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 proceed promptly, diligently and in good faith to pursue all reasonable measures to collect them; respondent shall file 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 26<sup>th</sup> day of May, 1964.

William L. Stewart  
President

Carl E. Blaker

Robert W. Long

George T. Hoover

Frederick B. Holtschoff  
Commissioners