

Decision No. 67429**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 PROGRESSIVE
TRANSPORTATION COMPANY, a
California corporation.

Case No. 7744
(Filed October 15, 1963)

Phil Jacobson, for respondent.
Russell A. Bergemann, for United Concrete
Pipe Corporation, interested party.
Elinore Charles and Charles P. Barrett,
for the Commission staff.

O P I N I O N

By its order dated October 15, 1963, the Commission instituted an investigation into the operations, rates and practices of Progressive Transportation Company.

A public hearing was held before Examiner Daly, on January 23, and May 5, 1964, at Los Angeles.

Respondent at the time of the transportation herein, conducted operations pursuant to radial highway common carrier, highway contract carrier, and city carrier permits. Respondent maintains a terminal in Compton, California and owns and operates 111 units of equipment. It has 81 employees and its total gross revenue for the year ending September 30, 1963 was \$1,692,401. It was stipulated that copies of appropriate tariffs and distance tables were served upon respondent.

On five different occasions during May, June and July, 1963, a representative of the Commission's Field Section visited respondent's place of business and checked its records for the period from January 1, 1963 through May 27, 1963, inclusive. During said period respondent transported 4,200 shipments. The underlying documents

relating to 22 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 3. Said exhibit reflects undercharges in the amount of \$587.11.

Of the shipments considered, 21 relate to the transportation of pipe and one relates to the transportation of steel coils.

The staff contends that on each of the shipments of pipe, respondent not only applied an incorrect commodity rate, but also failed to use the correct weight. The pipe was transported for United Concrete Pipe Corporation from its plant in Irwindale to a jobsite of the Metropolitan Water District in Orange.

The primary issue is whether the pipe is basically concrete or steel. Respondent rated each shipment under Item 29090 of Western Classification No. 78, which pertains to "Pipe, concrete, reinforced, loose or in packages." The staff rate expert testified that the shipments should have been rated under Item 29570 of said tariff, which pertains to "Pipe, iron or steel, covered or lined with cement mortar, loose or in packages."

An inspector for the Metropolitan Water District, who was stationed at the Irwindale plant of United Concrete Pipe Corporation, described the processing of the pipe. According to the evidence, steel cylinders varying in thickness from 5/8-inch to 3/4-inch, were manufactured by Kaiser Steel at its Fontana plant. The cylinders were transported to the Irwindale plant of United Concrete Pipe Corporation, where each was given a 1/2-inch concrete lining and an outer coating of 3/4-inch concrete embedded with wire mesh. It was the opinion of the witness that the steel pipe was functional in itself and that the concrete lining and coating were applied as

a protection against corrosion and provided no structural value of any importance. The testimony of a structural engineer was introduced by respondent. It was his opinion that the pipe had to be considered in its entirety and that each component part reinforced the other. He admitted, however, that the concrete lining and coating were primarily applied to prevent corrosion and thus contributed to the life of the steel pipe. Respondent also introduced the testimony of its traffic consultant who had solicited the confirmation of an earlier opinion by the Western Classification Committee by letter dated January 6, 1964. Exhibit 5 is a letter by the Western Classification Committee, dated January 20, 1964, wherein the Committee stated that "Shot-Cote", concrete cylinder pipe, ^{1/} steel reinforced, was ratable in accordance with Item 29090 as pipe, cement or concrete, reinforced. However, the initial inquiry of the Committee was made by respondent's vice president by letter dated September 16, 1959 (Exhibit 6), wherein he described the "Shot-Cote" concrete cylinder as a welded steel cylinder, utilized as a water seal membrane. To further assist the Committee, Exhibit 6 drew a distinction between (a) "Shot-Cote" concrete cylinder pipe and (b) cement mortar lined and coated steel pipe, by stating that the former would have a lighter steel cylinder and heavier bar reinforcement.

With respect to the weight of the shipments respondent relied upon an estimated weight of 31,400 pounds, which was supplied by the consignor and used by respondent to arrive at a bid price for the transportation performed. When finally weighed the shipments averaged 33,067 pounds. Respondent has assertedly weighed all shipments since becoming aware of the discrepancy.

On the movement of steel coils respondent was able to establish that it had been correctly rated as part of a multiple-lot shipment. Two shipments of steel coils were transported by respondent

^{1/} A trade name type of pipe manufactured by United Concrete Pipe Corporation.

from Bethlehem Steel Company in Vernon to United Concrete Pipe Corporation on March 7, 1963. The master bill of lading was not in the possession of respondent at the time the staff representative made his investigation, but was subsequently made available.

After consideration the Commission finds that:

1. Respondent at the time of the transportation herein, conducted operations pursuant to radial highway common carrier, highway contract carrier and city carrier permits.
2. Respondent was served with appropriate tariffs and distance tables.
3. Respondent transported shipments of pipe from United Concrete Pipe Corporation in Irwindale to a jobsite for the Metropolitan Water District in Orange.
4. Said pipe consisted of steel cylinders ranging in thickness from 5/8-inch to 3/4-inch which were lined with 1/2-inch concrete and coated with 3/4-inch concrete embedded with wire mesh.
5. The cylinder of said pipe was functional in itself and was processed with concrete and wire mesh for the purpose of preventing corrosion.
6. Said pipe is distinguishable from the "Shot-Cote" concrete cylinder pipe in that the latter is essentially a concrete pipe with reinforcing rod having a light steel cylinder which functions as a water seal membrane.
7. Said pipe (Finding 3) was improperly rated under Item 29090 of Western Classification No. 78 and should have been rated under Item 29570 of said tariff.
8. Through carelessness respondent unknowingly used a false report of weight, but discontinued such use when made aware of its inaccuracy.
9. With the exception of Part 7, respondent charged less than the lawfully prescribed minimum rate in the instances set forth in Exhibit 3, resulting in undercharges in the amount of \$560.70. ✓

Based upon the foregoing findings of fact, the Commission concludes that respondent violated Sections 3664 and 3737 of the Public Utilities Code and should pay a fine in the amount of \$1,500.

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 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 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 \$1,500 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 January 1, 1963 to the present time, for the purpose of ascertaining all undercharges that have occurred on shipments of property transported for the account of United Concrete Pipe Corporation.

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, 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 23rd day of JUNE, 1964.

 President

 Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.