

ORIGINALDecision No. 67846

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 own motion into the operations,)
 rates and practices of VENTURA)
 TRANSFER CO., dba ORR TANK LINES.)

Case No. 7794

Phil Jacobson, for respondent.
Donald B. Day and Charles P.
Barrett, for the Commission staff.

O P I N I O N

By its order dated December 3, 1963, the Commission instituted an investigation into the operations, rates and practices of Ventura Transfer Co., doing business as Orr Tank Lines.

A public hearing was held before Examiner Gravelle on February 20, 1964 and April 15, 1964, at Los Angeles.

Respondent presently conducts operations pursuant to Radial Highway Common Carrier Permit No. 56-170 issued January 20, 1937, Highway Contract Carrier Permit No. 56-28 issued March 14, 1963 and City Carrier Permit No. 56-1280 issued July 25, 1950. Respondent also holds certificates of public convenience and necessity as a highway common carrier and a petroleum irregular route carrier issued by this Commission in Decision No. 42623 dated March 5, 1949, Decision No. 43049 dated June 28, 1949 and Decision No. 44380 dated June 20, 1950. Respondent has terminals in Long Beach, Oxnard and Bakersfield. It owns and operates 49 pieces of power equipment and 80 trailers of various types. It employs 58 persons. Its total gross revenue reported to the Commission for the year ending June 30, 1964 was \$862,640. Copies of Minimum Rate Tariff No. 2 and Distance

Table No. 4 and all supplements and corrections thereto were served upon respondent. Respondent also operates under and is a party to Western Motor Freight Tariff Bureau Local Freight and Express Tariff No. 3-D, Cal. P.U.C. No. 25 and Local Freight and Express Tariff No. 33-B, Cal. P.U.C. No. 27.

On August 26, 27, 28 and September 3 and 4, 1963 a representative of the Commission's Field Section visited respondent's place of business and checked its records for the period from April 1, 1963 through August 1, 1963. The Commission representative reviewed 900 freight bills issued by respondent during the review period. He selected 10 of 15 billing statements reflecting certain movements from Edgington Oxnard Oil Co. to Edgington Long Beach Refinery. He also selected 3 of 135 shipments of animal feed to feed lots in Southern California and 1 of 5 other shipments he thought questionable. The underlying documents relating to these 14 shipments were taken from respondent's files, photocopied and the copies submitted to the License and Compliance Branch of the Commission's Transportation Division. They were introduced in evidence as Exhibit No. 1. Based upon the data taken from said shipping documents a rate study was prepared and introduced in evidence as Exhibit No. 2. Said exhibit reflects alleged undercharges in the amount of \$744.79.

This case as presented at the hearing is most easily disposed of by discussing separately each of the three "types" of violation alleged to have been committed by respondent.

Part 11 of Exhibits Nos. 1 and 2 involves a shipment of asphalt from Edgington Refineries to South Coast Asphalt Company.

Respondent's billing shows that a rate of 16½ cents per hundred pounds was assessed. Exhibit No. 2 shows that a rate of 18½ cents per hundred pounds should have been assessed. At the hearing it was developed that Carlsbad, the actual point of delivery of the shipment in question, was located at a point that should have involved a 20 cents per hundred pound rate. It was further shown that the carrier's regular billing clerk was on vacation at the time of this movement on July 1, 1963, and that upon his return he discovered the error and billed the shipper Edgington Oil Refinery, Inc. an additional \$32.26 in August of 1963, which was collected by the carrier on September 12, 1963, some three months prior to the institution of this investigation. It is obvious that although an error in billing was made by respondent said error was corrected and no undercharge or violation occurred with respect to Part 11 of Exhibits Nos. 1 and 2.

Parts 12, 13 and 14 of Exhibits Nos. 1 and 2 involve shipments of animal feed. The contention of the staff was that these shipments had been unloaded by the carrier through the use of carrier supplied power equipment. The staff had relied upon information supplied by a representative of the carrier. It was established at the hearing, however, that the information supplied to the staff representative was erroneous. The shipments reflected by Parts 12 and 14 were shown to have moved in equipment which was unloaded by gravity. This was demonstrated by photographs of the actual equipment utilized, Exhibits Nos. 8 and 9. It follows that there were no undercharges or violations on the part of respondent with respect to those two shipments. Part 13, however, was shown

to have moved in van-type equipment which employed a system of steel "bats" attached to parallel conveyor chains mounted in the floor of the van and operated by a motor. This shipment should have carried the unloading charge alleged by the staff and an undercharge of \$18.33 occurred as to said Part 13.

Parts 1-10 of Exhibits Nos. 1 and 2 involve the major issue and the majority of alleged undercharges and violations in this proceeding. Respondent has rated the shipments in these parts under the volume tender rates for "black oils" as provided in Item No. 620 of Western Motor Tariff Bureau Tariff No. 3-D. The rate as applied is subject to the commodity description in Item No. 40 of said tariff.

Item No. 40 reads as follows:

"BLACK OIL GROUP"

Petroleum and Petroleum Products, viz.:

Fuel Oil, residual and/or distillate, not suitable for illuminating (sic) purposes (see Note 1).

Gas Oil

Commodities named in this item are subject to an estimated weight of 7.75 lbs. per gallon.

Note 1: The term 'Fuel Oil' as used in this item DOES NOT INCLUDE petroleum products having a flash point below 110 degrees Fahrenheit (Tagliabue closed cup) or which have 95% distillation points below 464 degrees Fahrenheit."

The Commission staff rated the shipments in Parts 1-10 under Item No. 350 of Western Motor Tariff Bureau Tariff No. 33-B. The rates thus applied are for, among other things, "Asphalt" and "Petroleum". It is the contention of the staff that the commodity transported in the shipments reflected by Parts 1-10 was asphalt. It is contended on the other hand by respondent that said com-

modity was a residual fuel oil as defined by Item No. 40 of Western Motor Tariff Bureau Tariff No. 3-D. The single issue for the Commission to decide with regard to these shipments is what commodity was actually transported. If it were asphalt, then there are undercharges as alleged by the staff. If it were a residual fuel oil, then no undercharges existed and respondent has assessed and collected the proper rate.

Staff counsel has done an extremely competent job of presenting his argument in the brief filed in this matter. He has shown the various chemical and physical properties of the commodity in question. He has shown the various chemical and physical properties of asphalt as defined by experts in the petroleum field and by the Interstate Commerce Commission, compared the two and concluded that the commodity in question was in fact asphalt. This argument together with the testimony of the staff investigator constituted the staff case as to the nature of the commodity. The staff investigator's testimony consisted basically of conversations he had with Fred Wolfe, Fred Bumpass and Morley Chase concerning the nature of the commodity involved in these parts. It was stipulated at the hearing by staff counsel that the witness was not an expert qualified to determine the nature of the commodity, nor had he made any particular investigation or study to so qualify himself. It was not shown that he had ever even seen the commodity with which we are concerned.

Fred Wolfe is a chemist with Edgington Oil Refineries, Inc. of Long Beach, the consignee of the questioned commodity. Although not a graduate chemist, he has had 21 years of practical experience

in petroleum chemistry and has been with the consignee for almost 6 years. Wolfe testified at the hearing on behalf of respondent. He disagreed with the staff witnesses' account of their conversation explaining that he was of the opinion the staff witnesses had misinterpreted his statements. Wolfe was intimately familiar with the commodity in issue and in answer to a direct question stated: "Yes, I would say that it is a residual fuel oil."

Morley Chase is the manager of Edgington Oxnard Oil Company, the consignor in the shipments with which we are concerned and the superior of Fred Bumpass. He also disagreed with the staff witnesses' account of their conversation explaining that the statements attributed to him by the staff witnesses were only parts of a "general conversation" concerning "the problem at hand". Chase testified that the consignor sometimes does ship asphalt which as shown in Part 11 carries the asphalt rate, but that the commodity in Parts 1-10 was not in his opinion asphalt but was in fact residual fuel oil. He stated that when the volume tender rates of Tariff No. 3-D became available in April 1963, he checked with his chemist to see if the commodity in question came within the definition provided in Item No. 40. When he was informed that it did, he asked for and received that rate from respondent.

Staff counsel in his brief does not contend that the commodity herein is not an illuminating oil, nor that it has a low flash point and a high volatility but rather that its other characteristics are those of asphalt. The definitions of asphalt relied upon by staff counsel are general in nature and may or may not apply to the specific commodity in question. The staff presented no direct evidence as to the nature of the commodity. It was only respondent

who, through two expert witnesses, both of whom were familiar with the commodity, offered direct and specific evidence as to its nature. That evidence supports respondent's contention that said commodity is a residual of the crude oil extracted from consignor's wells at Oxnard, which residual meets the definition provided in Tariff No. 3-D. The Commission is not here called upon to interpret said tariff definition as a matter of law, but only to decide as a matter of fact whether the questionable commodity meets that definition. The only direct evidence on that point fully supports respondent's contention that said commodity does meet that definition.

After consideration the Commission finds that:

1. Respondent charged less than the lawfully prescribed minimum rate in the instance as set forth in Part 13 of Exhibit No. 2, resulting in an undercharge of \$18.33.

2. The evidence fails to establish that respondent has charged less than the applicable rate in any instance as set forth in Exhibit No. 2 save and except for Part 13 thereof.

O R D E R

IT IS ORDERED that:

1. Respondent shall take such action, including legal action,

as may be necessary to collect the amount of undercharge set forth herein and shall notify the Commission in writing upon the consummation of such collection.

2. In the event the undercharge to be collected by paragraph 1 of this order, or any part of such undercharge, remains 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 it; respondent shall file on the first Monday of each month thereafter, a report of the undercharge remaining to be collected and specifying the action taken to collect such undercharge, and the result of such action, until such undercharge has 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 15th day of SEPTEMBER, 1964.

Frederick B. Hallock
President
John E. Mitchell
George G. Grover

Commissioners

Commissioner George G. Grover, being necessarily absent, did not participate in the disposition of this proceeding.

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