

ORIGINAL

Decision No. 68033

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of NORMAN A.
HUGHEY, an individual, doing
business as C & H TRANSPORTATION
COMPANY.

Case No. 7887

Mervyn C. Hoover, for respondent.

Lawrence O. Garcia, for the Commission
staff.

O P I N I O N

By its order dated May 5, 1964, the Commission instituted an investigation into the operations, rates and practices of Norman A. Hughey, an individual, doing business as C & H Transportation Company.

A public hearing was held before Examiner Gravelle on July 14, 1964, at Yuba City.

Respondent presently conducts operations pursuant to Radial Highway Common Carrier Permit No. 51-762 and Petroleum Contract Carrier Permit No. 51-614. The latter permit is not involved in this proceeding and staff counsel requested at the hearing that no sanction be imposed relative to said permit. Respondent has a terminal in Marysville, California. He owns and operates two tractors, four flat-bed trailers and two tank trailers. He employs three drivers while the rating and office work are done by respondent and his wife. His total gross revenue for the year ending with the first quarter of 1964 was \$73,871. Copies of the

appropriate tariff and the distance table were served upon respondent.

On October 9 and 10, 1963, a representative of the Commission's field section visited respondent's home and place of business and checked his records for the period from January 1, 1963 through June 30, 1963, inclusive. Copies of the underlying documents relating to twenty-three shipments were made and submitted to the License and Compliance Branch of the Commission's Transportation Division, together with copies of various documents obtained from some of respondent's customers on December 17, 1963 (Exhibit No. 1). Based upon the data taken from said shipping documents a rate study was prepared and introduced in evidence (Exhibit No. 2). Said exhibit reflects alleged undercharges in the amount of \$3,220.01.

Exhibit No. 1 and the testimony of two representatives of the field section indicate several different types of violations of the Public Utilities Code throughout the twenty-three shipments reflected in said exhibit. Most of the shipments involve more than one type of violation. It was the staff contention that respondent had (1) assessed a rate less than the minimum, (2) falsified dates on split pickup and multiple lot shipments, (3) failed to issue proper documents showing the correct point of origin, (4) failed to assess off-rail charges, and (5) combined shipments as multiple lots although they moved over time periods in excess of those specified by Minimum Rate Tariff No. 2.

The staff witnesses testified to the various points of origin and destination and as to their being on or off rail. Each had personally observed the points to which he testified. The documents in Exhibit No. 1, other than the freight bills, are

weight certificates obtained by respondent, delivery receipts issued by the shippers, or sales invoices issued by the shippers. These documents reflect the dates and places of actual pickup and delivery of each shipment and fully support the contentions of the Commission staff.

Respondent testified in his own behalf in an attempt to explain the charges made against him. His explanations consisted in the main of statements that he had obtained some incorrect rates from the shipper, that he thought some of the dates on the documents might be incorrect, that he did not remember a particular shipment, that a truck may have broken down after pickup, accounting for a delay in delivery, and that he had relied on the shippers for on- or off-rail information.

In mitigation he testified that he had retained the services of a tariff consultant to help him correct his rating faults, that none of his violations were intentional, and that in the future he would rely on a rate bureau instead of his shippers for on- and off-rail information. He stated that in attempting to collect the undercharges alleged in Exhibit No. 2 he found that the shipper in Parts 3 through 8 was out of business and he could not therefore collect the undercharges shown in said parts. The total of such uncollectible undercharges is \$865.30. Respondent admitted that he had previously received two undercharge letters. One dealt with his petroleum permit. The other, on which he collected \$1,800, was explained as having resulted from his receiving incorrect rating information from a member of the Commission staff.

After consideration the Commission finds that:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 51-762 and Petroleum Contract Carrier Permit No. 51-614.

2. Respondent was served with the appropriate tariff and distance table.

3. Respondent charged less than the lawfully prescribed minimum rate in the instances as set forth in Exhibit No. 2, resulting in undercharges in the amount of \$3,220.01.

Based upon the foregoing findings of fact the Commission concludes that respondent violated Sections 3664, 3667, 3668 and 3737 of the Public Utilities Code and should pay a fine in the amount of \$3,000.

The order which follows will direct respondent to review his records to ascertain all undercharges that have occurred since January 1, 1963 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 respondent, or his 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. Norman A. Hughey shall pay a fine of \$3,000 to this Commission on or before the twentieth day after the effective date of this order.

2. Respondent shall examine his records for the period from January 1, 1963 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 his 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 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.

The Secretary of the Commission is directed to cause personal service of a certified copy 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 13th day of OCTOBER, 1964.

Frederick B. Hallock
 President

Walter J. Mitchell

Wesley C. King

William W. Bennett

Commissioners

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