

**ORIGINAL**Decision No. 68231

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's )  
 own motion into the operations, )  
 rates, charges and practices of )  
 MAPLES TRUCKING COMPANY, INC., a )  
 corporation. )

Case No. 7904

Thompson & Colegate, by Don C. Brown, for  
 respondent.

Robert C. Marks and J. B. Hannigan, for  
 the Commission staff.

O P I N I O N

By its order dated May 19, 1964, the Commission instituted an investigation into the operations, rates, charges and practices of Maples Trucking Company, Inc.

A public hearing was held before Examiner Porter on July 9, 1964, at Los Angeles, and the matter was submitted.

Respondent presently conducts operations pursuant to radial highway common carrier and city carrier permits. Respondent has an office in Orange, California. Its total gross revenue for the second, third and fourth quarters of 1963 and the first quarter of 1964 was \$1,603,815. Copies of appropriate tariff and distance tables were served upon respondent.

A representative of the Commission's Field Division visited respondent's place of business and checked its records for the period from May 1, 1961 through April 2, 1963. The representative testified that the check was a follow-up check to ascertain if respondent had complied with the review and collection order and the order requiring payment to subhaulers of 95 percent of the applicable minimum rate as directed in Decision No. 65173, in Case No. 7383. During said period

respondent transported approximately 7,500 shipments. The carrier had informed the Commission that it had complied with the Commission's decision.

The field representative selected shipping documents and submitted them 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 \$4,131.20.

The field representative presented evidence that certain moneys paid to subhaulers by the respondent were assigned to C. O. Maples who is the sole stockholder of respondent corporation.

Further evidence was presented which disclosed that respondent was paying a dispatcher of one of the shippers a percentage of the revenue derived from the transportation for said shipper. As to another shipper the carrier paid one half of the salary of a dispatcher employed by the shipper and for each of ten months paid that portion of the shipper's telephone bill which exceeded \$100.

The president of respondent corporation testified that he had assumed that all rating errors had been included in the original order so there was no need to review his records. He further testified that the assignments of the checks of the subhaulers had been entered into upon the advice of counsel (not the present one).

In regard to the payments to an employee of a shipper and the payments to a shipper of part of the wages of the shipper's dispatcher and part of the telephone bill, he testified that these payments were a saving to him as he would be put to additional expense if he had to employ dispatchers rather than use the shipper's. The telephone of the shipper was used by his subhauler to contact the respondent.

After consideration, the Commission finds that:

1. Respondent operates pursuant to radial highway common carrier and city carrier permits.
2. Respondent was served with appropriate tariff and distance tables.
3. Respondent charged less than the lawfully prescribed minimum rate in the instances as set forth in Exhibit 3, resulting in undercharges in the amount of \$4,131.20.
4. Respondent by use of the assignments failed to comply with the order to pay subhaulers as required in Decision No. 65173.
5. Respondent failed to review its records as required by Decision No. 65173.
6. Respondent's payments in the amount of \$3,030.02 to the dispatcher of a shipper and payments in the amount of \$3,659.08 to a shipper of part of the wages of the shipper's dispatcher and the payment of that portion of the shipper's telephone bills in excess of \$100 per month for each of ten months constituted both a commission and a refund.

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 \$5,000.

The order which follows will direct respondent to review its records to ascertain all undercharges that have occurred since May 1, 1961, and all commissions and refunds that were paid since January 1, 1963, in addition to those set forth herein. The Commission expects that when undercharges, commissions and refunds have been ascertained, respondent will proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges, commissions and refunds. 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, commissions and refunds, or has not acted in good faith, the Commission will reopen this proceeding for the purpose of 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. Maples Trucking Company, Inc. shall pay a fine of \$5,000 to this Commission on or before the twentieth day after the effective date of this order.

2. If respondent has not complied with this order by paying said fine within the time designated, the Commission shall institute appropriate action against respondent to collect said fine.

3. Respondent shall review its records from May 1, 1961 to the present time and shall remit to each of the subhaulers used during this period the difference between the amount paid to the subhauler and ninety-five percent of the appropriate rate listed in Minimum Rate Tariff No. 7 and the supplements thereto.

4. Respondent shall examine its records for the period from May 1, 1961 to the present time for the purpose of ascertaining all undercharges that have occurred and shall notify the Commission in writing upon the completion of such payments.

5. Respondent shall examine its records for the period January 1, 1963 to the present time for the purpose of ascertaining the amounts of all commissions and refunds paid to Chick Howerton and to Star Rock Products.

6. Within ninety days after the effective date of this order, respondent shall complete the examination of its records required by paragraphs 3, 4 and 5 of this order and shall file with the Commission a report setting forth the subhaulers by name and the amount originally paid to each, the further amount found due to each, and any amount subsequently paid to each. The report shall also include a list of the total undercharges, commissions and refunds found pursuant to the examination of its records ordered by paragraphs 4 and 5 herein.

7. Respondent shall take such action, including legal action, as may be necessary to collect the amounts of undercharges, commissions and refunds set forth herein, together with those found after the examination required by paragraphs 4 and 5 of this order, and shall notify the Commission in writing upon the consummation of such collections.

8. In the event undercharges, commissions and refunds ordered to be collected by paragraph 7 of this order, or any part of such undercharges, commissions and refunds, 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, commissions and refunds remaining to be collected and specifying the action taken to collect such undercharges, commissions and refunds and the result of such action, until such undercharges, commissions and refunds have been collected in full or until further order of the Commission.

9. In the event any payments to be made, as provided in paragraph 3 of this order, remain unpaid one hundred twenty days after the effective date of this order, respondent shall file with the Commission on the first Monday of each month thereafter a report setting forth the action taken to pay the subhaulers and the result of such action until payments have been made 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 17<sup>th</sup> day of NOVEMBER, 1964.

Frederick B. Hallock  
President

George E. H. [unclear]

Charles W. [unclear]

George T. Hoover

William M. Bennett  
Commissioners