

ORIGINAL

Decision No. 68581

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of R. E. THARP,
INC., a California corporation.

Case No. 7889
Amended June 3, 1964

Berol, Loughran & Geernaert, by Edward M. Berol, for respondent.
Elmer Sjostrom and Frank O'Leary, for the Commission staff.

O P I N I O N

By its order dated May 5, 1964, as amended, the Commission instituted an investigation into the operations, rates, charges and practices of R. E. Tharp, Inc.

A public hearing was held before Examiner Porter on July 21, 1964, at San Francisco, and the matter was submitted subject to the filing of briefs. Briefs having been filed the matter is now ready for decision.

Respondent presently conducts operations pursuant to radial highway common carrier and highway contract carrier permits. Respondent has an office in Chowchilla, California. Its total gross revenue for the last quarter of 1963 and the first three quarters of 1964 was \$622,159. Copies of appropriate tariffs and distance table were served upon respondent.

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 September 1963.

Underlying documents relating to 22 shipments were selected and, together with supplemental information, forwarded to the License

and Compliance Branch of the Commission's Transportation Division. Based upon the documents and information furnished, a rate study was prepared and introduced in evidence as Exhibit No. 2.

As the briefs point out there are two issues presented: (1) whether Tharps's operations as a dealer in hay are the legitimate buying and selling of hay by Tharp as a dealer in said commodity, or a device or means by which some person or corporation has obtained transportation of property between points within California at less than the minimum rates established by the Commission and (2) whether Tharp as a highway permit carrier rated shipments at amounts less than the minimum rates applicable thereto.

The evidence presented shows that the operations of the respondent are primarily of a seasonal nature, from the middle of July to the end of December. It is during this period of time that the approximately 80 percent or more of the revenues which respondent receives from transportation are earned. The respondent's vice president testified that in order to reduce the heavy financial burden put upon the corporation during the first six months of each year by the lack of income while overhead expenses continued, and in addition the problem facing the corporation of providing steadier and more year-round employment for its personnel, particularly drivers, it was decided to have the corporation engage in something other than transportation during the first six months of the year.

The Tharp family had had experience in the growing, buying and selling of hay.

In 1957 the vice president of respondent corporation, after investigation, commenced negotiating transactions involving hay. The corporation obtained a dealer's permit from the Department of Agriculture and obtained an appropriate bond.

The corporation has continued to conduct operations as an alleged buyer and seller of hay since 1957. Over the years respondent developed a working relationship with two brokers in particular for the alleged buying of hay. These are Ralph Webster in the Madera area and A. J. Hopkins in the McFarland area. Also over the years the alleged sales of hay have been made generally to Miller Hay Company at Bellflower.

Hopkins and Webster receive \$1 per ton over the alleged purchase price for their services. Miller Hay Company deducts from the sales price \$1.50 a ton. The respondent does not negotiate with either the growers to purchase hay or the dairymen to sell the hay. Respondent allegedly takes title to the hay when it is loaded on its equipment and weighed. The hay is transported to the Miller Hay Company. The driver parks the truck and waits for delivery instructions from Miller Hay Company. This generally takes from two to six hours. From these facts it is clear that respondent only contributes transportation to the transaction involved herein, performing none of the functions of a buyer or seller. Parts 1 through 15 of Exhibit No. 2 were similar to 168 buy and sell transactions and were treated as if they were in fact transportation of property and showed that there would be undercharges in the amount of \$591.64.

Parts 16 through 22 were similar to approximately 20 shipments and show rate violations which result in undercharges in the amount of \$452.15. It was stipulated that as to these parts the staff's computation was correct. The respondent vice president testified that these errors were the result of inexperienced help and that corrective action has been taken in an effort to eliminate future errors.

After consideration the Commission finds that:

1. Respondent operates pursuant to radial highway common carrier and highway contract carrier permits.

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

3. Respondent has become so dependent upon the alleged sellers of hay and the alleged purchaser of hay that it contributes nothing to the transactions herein involved, except the transportation of property. The alleged "buy-sell" transactions herein referred to were not in fact purchase and sale transactions but were in fact transportation of property for compensation on the public highways, subject to the provisions of the Highway Carriers' Act (Sections 3501-3809 of the Public Utilities Code).

4. Said transactions constituted a device whereby respondent, in violation of Section 3668 of the Public Utilities Code, has transported property as a permitted carrier at rates less than the applicable minimum rates and charges established by this Commission.

5. Respondent assessed and collected less than the applicable minimum rates and charges established by this Commission as shown in Parts 16 through 22 of Exhibit No. 2, resulting in undercharges in the amount of \$452.15.

Based upon the foregoing findings of fact the Commission concludes that respondent violated Sections 3668 and 3667 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 its records to ascertain all undercharges that have occurred since April 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 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 \$5,000 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 April 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 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 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.

6. Respondent shall cease and desist from using fictitious "buy and sell" transactions, such as those disclosed herein as a device for evading the minimum rate orders of this 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 9th day of February, 1965.

Fredrick B. Hallock
President
George H. Hoover
William M. Sewell

Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.