

Decision No. 68875**ORIGINAL**

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)
 John W. Chang and Woodrow Chang,)
 a partnership, doing business as,)
 JOHN W. CHANG TRUCKING.)

Case No. 8095
 (Filed January 5, 1965)

Woodrow Chang, for John W. Chang and Woodrow
Chang, respondents.
John C. Gilman and Frank J. O'Leary, for the
Commission staff.

O P I N I O N

By its order dated January 5, 1965, the Commission instituted an investigation into the operations, rates, charges and practices of John W. Chang and Woodrow Chang, a partnership, doing business as John W. Chang Trucking, hereinafter referred to as respondents.

A public hearing was held before Examiner Mooney at Fresno on February 24, 1965, on which date the matter was submitted.

Respondents presently conduct operations pursuant to radial highway common carrier and highway contract carrier permits. Respondents have a terminal in Orosi, California. They own and operate seven tractors, eight trailers and one truck. They employ seven drivers and one clerk. Both respondents are on the payroll. Their total gross revenue for the year 1963 was \$285,264 and for the first six months of 1964 was \$76,410. Copies of Minimum Rate Tariffs Nos. 2 and 3 and

Distance Table No. 4 and supplements and additions thereto were served upon respondents.

A representative of the Commission staff testified that he visited respondents' place of business during the week of August 17, 1964, and checked their records of shipments of cantaloupes transported for Ferricone and Ramonas, a Los Angeles firm, during the period from July 1, 1964 through August 10, 1964, inclusive. The witness stated that during said period respondents transported 66 cantaloupe shipments for Ferricone and Ramonas. He testified that he made true and correct photostatic copies of invoices (Exhibit 1) and freight bills and supporting documents (Exhibit 2) covering 44 of the shipments. He pointed out that the 44 shipments were picked up at the following locations: 38 at Levy and Zentner, Firebaugh; two at V. H. Azhdexian, Los Banos; three at Perez Brothers, Firebaugh; and one at Garin Co., Mendota.

The representative testified as follows regarding the 44 shipments: Each shipment was cooled with blocks of ice that were crushed and blown on top of the load; each block of ice weighed 300 pounds; the weight of the ice was not shown on any of the freight bills; the transportation charges for each shipment were based on the weight of the cantaloupes only; respondents did not obtain public weighmaster's certificates for seven of the shipments and part of another shipment that originated at Levy and Zentner, and estimated weights were used for this transportation; the balance of the shipments was weighed at either Bakersfield or Los Angeles, and in each instance, all of the ice had melted by the time the shipment reached Bakersfield; Ferricone and Ramonas wanted the cantaloupes to arrive in Los Angeles cool and dry; public

scales for weighing the shipments were available at or near the location from which each load was picked up; the freight bill for the one shipment picked up at Garin Co. included a notation that 20 blocks of ice were used; the freight bill for one of the shipments picked up at Perez Brothers included a notation that ten blocks of ice were used, and one of the Perez brothers stated that ten blocks of ice were used to cool the other two shipments from their company.

Documents (Exhibits 4 and 6) presented by the staff and authenticated by the manager of Union Ice Co. show the number of blocks of ice that were used to cool each of the 38 shipments which originated at Levy and Zentner and each of the two shipments which originated at V. H. Azhderian. The manager testified that the shipments from V. H. Azhderian were moved from the point of pickup to the plant of the Union Ice Co. for icing. According to the record, the other shipments were iced at origin.

A rate expert of the Commission staff testified that he took the documents photostated by the representative (Exhibits 1 and 2) together with the supplemental information testified to by the representative and the manager of Union Ice Co. and formulated Exhibit 7, which shows the rate and charge assessed by respondents, the minimum rate and charge computed by the staff and the amount of undercharge for each of the 44 shipments. The witness pointed out that Item 155 of Minimum Rate Tariff No. 8 requires that the weight of the ice used be included in the gross weight of each shipment; that an additional charge be assessed in connection with the two shipments from V. H. Azhderian that were moved to the plant of Union Ice Co. for icing, and that each shipment be weighed

at the public scales located nearest to the point at which the icing was performed. He also pointed out that Item 60 of the tariff requires that a public weighmaster's certificate be obtained for all shipments weighing 18,000 pounds or more. The rate expert stated that the aggregate of the undercharges shown in Exhibit 7 is \$786.33.

One of respondent partners testified as follows: The undercharges shown in Exhibit 7 were unintentional errors; respondents did not realize at the time the shipments in issue were transported that Item 155 of Tariff No. 8 had been amended on February 15, 1964, to require that iced shipments be weighed at the public scales located nearest to the point where icing was performed; it has always been respondents' policy to obtain certified public weighmaster's certificates for produce shipments; several of the shipments for which a certified weight certificate had not been obtained were transported by subhaulers; the few remaining shipments for which no certified weight certificate was obtained were handled by a driver who has since been discharged by respondents.

According to the Commission records respondents were sent an undercharge letter on January 22, 1964.

After consideration the Commission finds that:

1. Respondents operate pursuant to radial highway common carrier and highway contract carrier permits.
2. Respondents were served with appropriate tariffs and distance table.
3. Respondents did not obtain a certified public weighmaster's certificate as required by Item 60 of Minimum Rate Tariff No. 8 in connection with seven of the shipments transported from

Levy and Zentner and part of another shipment that was transported on several pieces of equipment from the same origin.

4. Public scales were located at or near the origin of each of the shipments included in Exhibits 2 and 7.

5. The two shipments from V. H. Azhderian included in Exhibits 2 and 7 were moved from origin to the plant of the Union Ice Co. for icing.

6. The staff ratings of the 44 parts in Exhibit 7 are correct.

7. Respondents charged less than the lawfully prescribed minimum rate in the instances set forth in Exhibit 7, resulting in undercharges in the amount of \$786.33.

Based upon the foregoing findings of fact, the Commission concludes that respondents violated Sections 3664, 3667 and 3737 of the Public Utilities Code and should pay a fine pursuant to Section 3800 of the Public Utilities Code, in the amount of \$786.33, and that in addition thereto respondents should pay a fine pursuant to Section 3774 of the Public Utilities Code, in the amount of \$500.

The Commission expects that respondents 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 respondents and the results thereof. If there is reason to believe that respondents, or their attorney, have not been diligent, or have not taken all reasonable measures to collect all undercharges, or have 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. John W. Chang and Woodrow Chang shall pay a fine of \$1,286.33 to this Commission on or before the twentieth day after the effective date of this order.

2. Respondents shall take such action, including legal action, as may be necessary to collect the amounts of undercharges set forth herein, and shall notify the Commission in writing upon the consummation of such collections.

3. In the event undercharges ordered to be collected by paragraph 2 of this order, or any part of such undercharges, remain uncollected sixty days after the effective date of this order, respondents shall proceed promptly, diligently and in good faith to pursue all reasonable measures to collect them; respondents shall file with the Commission, on the first Monday of each month after the end of said sixty days, 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 this order to be made upon respondents. 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 APRIL, 1965.

Frederick B. Hallock
President
George H. Trover
Commissioners