NB

Decision No. 69873

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates and practices of M. and M. TRANSFER COMPANY, a California corporation.	)))))	Case No. 8159

Charlton A. Mewborn, for respondent.
Elmer Sjostrom, for the Commission staff.

O P I N I O N

By its order dated April 6, 1965, the Commission instituted an investigation into the operations, rates and practices of M. and M. Transfer Company, a corporation, and a highway common carrier as defined in Section 213 of the Public Utilities Code, for the purpose of determining whether the respondent has violated the provisions of Section 494 of the Public Utilities Code by charging and collecting a different compensation for the transportation of property than the applicable rates and charges specified in Western Motor Tariff Bureau Tariff No. 111.

A public hearing was held before Examiner Fraser on June 17, 1965 at Los Angeles.

It was stipulated that the respondent operates under a radial highway common carrier permit, a highway contract carrier permit, a city carrier permit, a petroleum contract carrier permit, and as a highway common carrier under Commission Decisions Nos. 52879, 54555, 54903 and 63070.

The respondent operates out of a single terminal at Torrance with 26 power units and 30 trailer units. It employs about

10 in the office, 15 to 20 drivers and some shop personnel. Its gross revenue for 1964 was $623,198 and $167,584 for the first quarter in 1965.

A representative of the Commission testified that he visited respondent's terminal during the period of December 14 through 18 in 1964 and on January 5 through 8 in 1965. He reviewed 2500 freight bills which concerned transportation performed from June through November of 1964. The underlying documents relating to 31 shipments were taken from respondent's files and photocopied. Said photocopies were submitted to the Rate Analysis Unit of the Commission's Transportation Division. Based upon the data taken from said photocopies a rate study was prepared and introduced in evidence as Exhibit 2. Said exhibit reflects purported undercharges in the amount of $2,177.35.

The staff rate expert testified that on Parts 1 through 12 (Exhibit 2) a rail competitive rate was charged by the respondent, but such rate could not be used because the railroad owning the spur which serves the consignee does not participate in this rate. He further testified that the respondent also charged a rail competitive rate on Parts 13 through 21 (Exhibit 2), but such rate could not be used by the respondent because the latter does not participate in the specific item in the agency tariff in which this rate is published. The witness noted that the rate on Parts 22 through 28 is based on mileage and the respondent may have selected the rate charged from the wrong mileage bracket. The respondent applied the rate on 3-inch pipe in Part 29. Over 30,000 pounds of the pipe having a diameter greater than four inches, the rate on 4-inch pipe was charged by the staff on this portion. The witness stated that the respondent charged hourly rates on Parts 30 and 31. The hourly rates can only be applied in Los Angeles and Orange

Counties. The destination on these two shipments is outside of the zone where hourly rates are authorized.

The president of the respondent testified as follows: The transportation on Parts 1 to 21 was performed for a consignee who purchased or acquired an adjoining piece of land with a rail spur about two years ago and then insisted that they be charged only the rail rates. The erroneous rates were selected by the traffic manager of respondent, who is no longer employed by the company. This traffic manager also marked a map (Exhibit 3) which purported to outline the limits of the respondent's certificated area. The map is not accurate and places the destination on Parts 12 through 21 out of the zone served under certificated authority. The point of destination is actually within the zone. The respondent did not discover this fact until a few days before the hearing when the map was shown to be in error. Respondent failed to participate in the tariff in which this rate was published because the respondent thought the service was being performed as a permitted carrier. The undercharges on Parts 22 through 28 are due to an apparent error in computing the constructive mileage. Part 29 was also improperly rated as described by the staff witness. Hourly rates were applied on all of the transportation performed for the consignee on Parts 30 and 31. The rate that was applied was improperly charged in these two instances. The witness stated that the undercharges found by the staff were due to mistakes and inexperience. They were not part of a deliberate effort to violate the law.

A staff undercharge letter was mailed to the respondent in July 1962 and $689 in undercharges were collected.

After consideration the Commission finds that:

1. Respondent operates pursuant to radial highway common carrier, highway contract carrier, city carrier and petroleum contract

carrier permits and also under a certificate of public convenience and necessity.

2. Respondent was served with appropriate tariffs and distance tables.

3. Respondent charged less than the lawfully prescribed tariff rate in the instances as set forth in Exhibit 2, resulting in undercharges in the amount of $2,177.35.

Based upon the foregoing findings of fact, the Commission concludes that respondent violated Section 494 of the Public Utilities Code and should pay a fine pursuant to Section 2100 of the Public Utilities Code in the amount of $2,177.35, and in addition thereto respondent should pay a fine pursuant to Section 1070 of the Public Utilities Code in the amount of $200.

The Commission expects that 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 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 $2,377.35 to this Commission on or before the twentieth day after the effective date of this order.

2. Respondent 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, respondent shall proceed promptly, diligently and in good faith to pursue all reasonable measures to collect them; respondent 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 respondent. The effective date of this order shall be twenty days after the completion of such service.

Dated at Los Angeles, California, this 14th day of SEPTEMBER, 1965.

Frederick B. Holoboff
President

Peter E. Mitchell

George G. Grover

[signature]

William M. Bennett
Commissioners