

ORIGINAL

Decision No. 69816

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 EASTMAN)
TRANSPORT CO., INC., a corporation.)

Case No. 8199

Robert C. Petersen, for respondent.

Robert C. Marks and E. E. Cahoon, for
the Commission staff.

O P I N I O N

By its order dated June 15, 1965, the Commission instituted an investigation into the operations, rates, charges, and practices of Eastman Transport Co., Inc., a corporation.

A public hearing was held before Examiner Gravelle on July 29, 1965, at Fort Bragg, and the matter submitted on that date.

Respondent presently conducts operations pursuant to Radial Highway Common Carrier Permit No. 23-1512 issued November 7, 1961, Highway Contract Carrier Permit No. 23-1513 issued November 7, 1961 and Petroleum Contract Carrier Permit No. 23-1511 also issued November 7, 1961. Copies of the appropriate tariffs and the distance table were served upon respondent and were in its possession at all times mentioned herein. Respondent has a terminal in Fort Bragg, California. It owns and operates nine tractors and ten trailer units, employs three office personnel, one dispatcher and eight to ten drivers. Its gross operating revenue for the calendar year 1964 was \$166,518, and for the first quarter of 1965

was \$58,769. Its president is E. G. Eastman, its vice president is Louise Eastman and H. E. Campbell serves as secretary-treasurer. E. G. Eastman is respondent's sole shareholder.

A representative of the Commission's Field Section conducted an investigation of respondent on July 13-17 and August 8-14, 1964, as well as on December 7 and 8, 1964. Said investigation was made both by way of visits to respondent's place of business and surveillance of its operating equipment on the highway. Respondent's records for the period January 1, 1964, through July 31, 1964, were checked. During said period respondent transported some 360 shipments. The underlying documents relating to 50 shipments were taken from respondent's files and photocopied. Said copies were submitted to the Rate Analysis Unit of the Commission's Transportation Division. Based upon the data taken from said photocopies, as well as information supplied by the staff investigator, a rate study was prepared and introduced in evidence as Exhibit No. 2. Said exhibit reflects purported undercharges in the amount of \$1,770.45.

Exhibit No. 2 consists of 30 separate parts as does Exhibit No. 1 which are the photocopies of underlying shipping documents upon which the rate study was partially based.

It was stipulated that the undercharges reflected by Parts 10 through 20, inclusive, actually existed. Respondent's counsel claimed they were the result of an honest error. The undercharge in each of those parts amounts to \$7.87 which represents a pumping charge of 1-3/4 cents per 100 pounds as provided in Item No. 100 of Minimum Rate Tariff No. 6 and Item No. 170 of Minimum Rate Tariff No. 6-A for the use of pumping equipment supplied by the carrier.

Parts 1 through 4 each show an undercharge of \$6.75. Said undercharges result from a discrepancy of 1.6 miles. The point of origin for each of said shipments was Petaluma and the point of destination was shown as Fort Bragg. The staff investigator determined the actual point of destination to be 1.6 miles north of the Fort Bragg basing point.

Parts 5 through 9 involve the alleged failure of respondent to assess the same pumping charge applicable to Parts 10 through 20 but involve a different consignee and a different point of destination. Respondent's counsel did not stipulate to the undercharges in Parts 5 through 9 but challenged the knowledge of the staff investigator as to the precise means by which said shipments of diesel fuel were actually unloaded from respondent's equipment. On cross-examination both the staff investigator and the rate expert admitted that they had no actual knowledge of how the diesel fuel in said parts was unloaded from respondent's equipment. The investigator had assumed that the carrier's pumping equipment had been used from the fact that it existed. The rate expert made her rating based upon that assumption by the investigator.

Part 21 had a destination point which was off rail. Respondent failed to apply the charge for movement from the nearest team track and an undercharge of \$30.93 resulted. The staff investigator made a personal check of the point of destination to determine its rail status as he did with Part 24, and the origin points in Parts 25 and 26; all were off rail. Part 24 showed an undercharge of \$4.76, Part 25 showed an undercharge of \$5.40 and Part 26 showed an undercharge of \$6.22.

Parts 22 and 23 were rated by respondent as split deliveries but were rated by the staff expert as two separate shipments within each part because the documents in Exhibit No. 1 do not conform to Item 170 of Minimum Rate Tariff No. 2 relative to written instructions prior to or at the time of movement. Undercharges of \$143.15 and \$71.05, respectively, resulted.

Parts 27 through 29 purportedly reflect free transportation rendered by respondent for the Aborigine Lumber Co. and Part 30 a violation of the credit rule Item 250-A of Minimum Rate Tariff No. 2. The staff investigator testified that shipping documents reflecting said transportation were not to be found in the carrier's possession in July, August or December of 1964 and it was therefore assumed that the transportation had been performed without being billed or paid for. He did admit that there was never any denial by any officer of respondent that the shipments had been made and that respondent's employees cooperated with him in trying to locate the shipping documents. Exhibits Nos. 4 through 8 were admitted in evidence at the hearing. They are originals or copies of freight bills, shipping orders and weight tags for each of the shipments in Parts 27 through 29. They are dated as of the time of movements and reflect charges equal to or greater than computed by the staff rate expert in her exhibit. Each freight bill is marked with a notation that it has been paid. Documents underlying Part 30 were sent to the Commission by respondent on August 20, 1964.

Respondent offered no direct testimony in its own behalf. No evidence of past violations was presented relative to this respondent.

After consideration the Commission finds that:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 23-1512; Highway Contract Carrier Permit No. 23-1513 and Petroleum Contract Carrier Permit No. 23-1511.
2. Respondent was served with appropriate tariffs and the distance table.
3. There is insufficient evidence to justify the staff ratings of Parts 5 through 9 of Exhibit No. 2.
4. Parts 27 through 29 of Exhibit No. 2 do not reflect transportation provided free by respondent.
5. Part 30 does not reflect a violation of Item No. 250-A of Minimum Rate Tariff No. 2.
6. Respondent charged less than the lawfully prescribed minimum rate in the instances as set forth in Parts 1 through 4, and Parts 10 through 26 of Exhibit No. 2, resulting in undercharges in the amount of \$375.08.

Based upon the foregoing findings of fact, the Commission concludes that respondent 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 \$375.08.

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 \$375.08 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 San Francisco, California, this 19th day of OCTOBER, 1965.

Frederick B. Haskett
President

George L. Trotter

August

William T. Bennett

Commissioners

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