

ORIGINALDecision No. 70645

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of MICHAEL
ALFRED POPPERT, an individual,
doing business as POPPERT TRUCKING
COMPANY.

Case No. 8160

Milton W. Flack, for Michael Alfred Poppert,
respondent.

Elmer J. Sjostrom and Frank J. O'Leary, for
the Commission staff.

O P I N I O N

On April 6, 1965 the Commission instituted an investigation into the operations, rates and practices of Michael Alfred Poppert, doing business as Poppert Trucking Company.

A public hearing was held before Examiner Fraser on November 18 and on December 14 and 15, 1965, at Los Angeles.

Respondent presently conducts operations pursuant to radial highway common carrier, highway contract carrier and city carrier permits. He has a single terminal in El Monte, California. He owns and operates seven tractors, two trucks, thirteen semi-trailers and five full trailers. He employs nine drivers, one mechanic, a dispatcher and a part-time bookkeeper. His gross revenue for the last two quarters in 1964 and first two quarters in 1965 was \$396,282. Copies of appropriate tariff and distance tables were served upon respondent.

During September and November of 1964 a representative of the Commission's Field Section visited respondent's place of

business and checked his records for the period from January 1 through June 30, 1964. During said period the respondent transported over 1,250 shipments. The underlying documents relating to twenty 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. (The exhibit includes 19 parts; Part No. 12 was withdrawn prior to the hearing.)

On Part 1 the staff representative testified that there was nothing in the respondent's records to show what charge was assessed, or whether any payment was made for the transportation. The staff rate exhibit shows an undercharge of \$704.89, which is the total due for the transportation. The respondent placed Exhibits 3 and 4 in evidence, which show respondent actually charged \$804.58. Respondent then testified that payment was received in two installments during October and November of 1964. Exhibit 5 was produced to show the first installment was received from Western Forest Products on October 27, 1964 and the final installment on November 4, 1964. In Part 2 the staff shows an undercharge of \$88.78 due to respondent's failure to assess the off-rail charge at the point of origin. The driver's receipt (Part 2E of Exhibit 1) shows pickup was made at the Crawford Lumber Co. in Potter Valley. This point is off rail. The respondent testified that the pickup was actually at the Crawford mill which is in Ukiah. The staff exhibit shows an undercharge on Part 3, due to respondent's failure to assess an off-rail charge at destination. Respondent testified that he was informed by the consignee (a large lumber company) that the installation

C. 8160 ds

was on rail. The staff claims that an incorrect off-rail charge at point of pickup caused the undercharge on Parts 4, 5 and 6. The respondent stated he used odometer mileage to determine the off-rail mileage on Part 5; on Parts 4 and 6 he assumed the point of pickup was Bridgeville, which is a part of the consignor's address. The staff contends that Part 7 is a shipment which improperly includes a split pickup and a split delivery on the same transportation and which was hauled without written instructions from the shipper. The respondent was in accord with the staff position on Part 7. The staff contends that Parts 8, 9 and 10 are multiple lot shipments with pickups more than two days apart in violation of Item 85 of Minimum Rate Tariff No. 2. It also claims that Item 85 is violated on Part 11, which has a pickup prior to the date on the master bill issued by the shipper. Respondent testified that the undercharge on Part 9 was billed and paid on January 25, 1965. He stated documents were in error on Part 10 and a freight bill seems to be missing. He further testified that the drivers' tag which the staff has accepted as proof of delivery may be in error, along with the weight certificate, which is dated prior to the drivers' tag. Respondent testified (on Part 11) the master bill was picked up on February 5, 1964, before the first pickup, which is all that is required to satisfy the provisions of Item 85. Part 12 was withdrawn by the staff prior to the hearing. Respondent failed to impose the required switching charge on Parts 13 through 16 and the required off-rail charge on Parts 17 through 19. Respondent also used an incorrect rate on the last three parts. Respondent testified that he was informed the consignee on Parts 17, 18 and 19 was on rail. A staff witness testified that he personally

visited the point of destination on Part 3 and Parts 17, 18 and 19 and that both destinations are off rail. Respondent used the correct rate on Part 20, but it was multiplied by the actual weight of the shipment (90,900 lbs.) rather than the established minimum of 100,000 pounds. Respondent stated that he thought the method he used was correct.

The Commission finds as follows:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 19-49836, Highway Contract Carrier Permit No. 19-55158 and City Carrier Permit No. 19-55159.

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

3. Respondent assessed and was paid in excess of the required minimum for the transportation referred to in Part 1.

4. On January 25, 1965 respondent billed and collected the \$157.58 undercharge referred to in Part 9 of Exhibit 2.

5. Respondent charged less than the lawfully prescribed minimum rate on Parts 2 through 8, Parts 10 and 11, and Parts 13 through 20, inclusive, as set forth in Exhibit No. 2, resulting in undercharges in the amount of \$1,001.46.

6. The record does not establish that respondent transported two free loads as claimed by staff representative in Part 1 of Exhibit 2.

The Commission concludes that respondent violated Section 3667 of the Public Utilities Code and should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$1,001.46, and in addition thereto respondent should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$250.

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 into the measures taken by respondent and the results thereof. If there is reason to believe that respondent or his 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. Respondent shall pay a fine of \$1,251.46 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. Respondent shall proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges, and 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 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.

4. Respondent shall cease and desist from charging and collecting compensation for the transportation of property or for any service in connection therewith in a lesser amount than the minimum rates and charges prescribed by 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 3rd day of MAY, 1966.

Frederick B. Holliff
President

George E. Brown
Commissioners

William C. Dennis
Commissioners