

ORIGINALDecision No. 71315

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own
 motion into the operations, rates and
 practices of SPENCER TRUCK CO., doing
 business as SPENCER TRUCK CO., INC.,
 VERNON S. JENKINS, WILLIAM F. BOWLIN,
 doing business as BOWLIN TRUCKING LINES,
 THOMAS N. COOPER and CHESTER L. COOPER,
 doing business as COOPER TRANSPORT,
 VINCENT GANDUGLIA TRUCKING, J. M. BOSS,
 and EARL SCENEIDER and JACK H. CORNWELL,
 doing business as C & S TRUCKING.

Case No. 8409

John E. Shepard, for Spencer Truck Co.;
Marshall A. Smith, Jr., for Estate of
 Thomas N. Cooper and Chester L. Cooper;
Vernon S. Jenkins; J. M. Boss; respondents.
Donald L. Knowles, for Leslie Salt Co.;
T. E. Carlton, for Morton Salt Co.;
 interested parties.
Elinore C. Morgan and E. E. Cahoon, for the
 Commission staff.

O P I N I O N

By its order dated May 10, 1966, the Commission instituted an investigation into the operations, rates and practices of the above-named respondents.

A public hearing was held before Examiner Gravelle on July 13, 1966, at Fresno.

Respondent Spencer Truck Co. (Spencer) presently conducts operations pursuant to Radial Highway Common Carrier Permit No. 10-5097, Highway Contract Carrier Permit No. 10-5098 and City Carrier Permit No. 10-5799. Respondents Thomas N. Cooper and Chester L. Cooper (Cooper) hold Radial Highway Common Carrier Permit No. 10-9541. Respondent Vernon S. Jenkins (Jenkins) holds Radial Highway Common Carrier Permit No. 10-9189. Respondent J. M. Boss holds Radial Highway Common Carrier Permit

No. 50-3541 and Highway Contract Carrier Permit No. 50-4331. Respondents Earl Schneider and Jack H. Cornwell (C & S) hold Radial Highway Common Carrier Permit No. 19-56048.

Spencer has two terminals in Fresno; operated 65 pieces of rolling stock during August and September of 1965 and employed 42 persons. It reported gross revenues of \$597,695 for the year ending with the first quarter of 1966. Copies of the appropriate tariff and Distance Table No. 5 have been served upon Spencer.

From August 31, 1965 through September 3, 1965, a representative of the Commission's Transportation Division checked Spencer's records at its terminal at 2501 Sunland Avenue, Fresno. The period of review was February 1, 1965 through August 15, 1965. Thirty-five hundred freight bills issued during said period were examined. The underlying documents relating to fifty shipments were taken from Spencer's files and photocopied. They were introduced in evidence as Exhibits Nos. 1 and 2. Said photocopies were submitted to the Rate Analysis Unit of the Transportation Division together with certain supplemental information gathered by the staff representative. Based upon the data taken from the photocopies and the supplemental information, rate studies were prepared and introduced in evidence as Exhibits Nos. 3 through 16. After modification at the hearing said rate exhibits reflect undercharges and underpayments of \$2,305.10.

While this proceeding names various respondents, counsel for the Commission staff indicated in her opening statement that the staff was primarily interested in and would introduce evidence concerning respondent Spencer. The other respondents are carriers employed by Spencer as subhaulers who received less than the applicable minimum rate from Spencer for transportation provided for entities affiliated with Spencer.

Exhibits Nos. 6 and 9 were modified at the hearing by the Commission rate expert by deleting certain alleged undercharges which involved the transportation of empty pallets. The deletions were made on the basis that the pallets were not the property of the party shown to be the shipper in said exhibits but in fact belonged to another person. With the foregoing deletion made, counsel for respondent Spencer stipulated that Exhibits Nos. 3 through 16 accurately set forth the transportation charge assessed by Spencer as well as what the rate expert believed to be the lowest applicable minimum rate and the difference between the two. It was also stipulated that as of June 15, 1962 the permits held by Spencer contained what is commonly known as a subhaul restriction whereby Spencer is required to pay subhaulers the applicable minimum rate when transporting the property of Food Machinery Corporation, Niagara Chemical Corporation or their customers or suppliers. Exhibits Nos. 15 and 16 reflect instances in which Spencer paid to the other respondents herein something less than the applicable minimum rate for such transportation performed by said other respondents.

The Commission rate expert testified that the undercharges in Exhibits Nos. 3 through 14 resulted from such things as Spencer's misuse of classifications and rates, failure to assess off-rail charges, improper consolidation of shipments without benefit of proper written instructions and erroneous rating. No challenge to the rating of the expert was made by Spencer.

Through the testimony of two of Spencer's officers and its rate clerk, said respondent attempted to show that the improper procedures reflected in the staff exhibits were unintentional and resulted from its misconception that its rating procedures were

proper. The misconception was based upon the fact that Spencer had been investigated by a Commission representative some two years ago and at that time Spencer was informed that "everything looked real good" and that its "procedures were in order". During cross-examination these witnesses admitted that they were unaware of what was reviewed by the Commission representative in the earlier investigation.

Counsel for Spencer argued that had the Commission informed his client of the results of the present investigation all errors would have been immediately corrected and that there would have been no need for the institution of a formal case and a public hearing. In support of this contention it was developed that since the issuance of the Order Instituting Investigation Spencer has employed the services of a transportation consultant to review its records every three months, has secured rail tariffs, has commenced a system of double checking on all ratings and has ceased to use the services of any subhaulers. He admitted that the subhaulers must be paid but argued that no fine should be imposed by way of punishment of Spencer.

Staff counsel pointed out that there had been no defense to the violations shown by the evidence presented, that nothing was proved by Spencer that would lead the Commission to believe it had been misled by a Commission representative, and that even if such a thing had occurred the Commission could not be bound by such misdirection. She recommended a fine in the amount of the undercharges pursuant to Public Utilities Code Section 3800 in the amount of \$1,405.95. She recommended also an order that Spencer pay the respondent subhaulers \$899.15, be admonished to determine and bill the owner of empty pallets it transported, and

pay a fine of \$2,500 pursuant to Section 3774 of the Public Utilities Code.

After consideration the Commission finds that:

1. Respondent Spencer Truck Co. operates pursuant to Radial Highway Common Carrier Permit No. 10-5097, Highway Contract Carrier Permit No. 10-5098 and City Carrier Permit No. 10-5799, each of which contains the following restriction:

"Whenever permittee engages other carriers for the transportation of property of Food Machinery Corporation or Niagara Chemical Corporation, or the customers or suppliers of Food Machinery Corporation or Niagara Chemical Corporation, permittee shall not pay such carriers less than the minimum rates and charges established by the Commission for the transportation actually performed by such other carriers."

2. Respondent Spencer Truck Co. was served with the appropriate tariff and distance table.

3. Respondent Spencer Truck Co. has charged less than the lawfully prescribed minimum rate in the instances as set forth in Exhibits Nos. 3 through 14 resulting in undercharges in the amount of \$1,405.95.

4. Respondent Spencer Truck Co. paid subhaulers less than the applicable minimum rate in the instances as set forth in Exhibits Nos. 15 and 16 resulting in balances due to said subhaulers in the amount of \$899.15.

5. Respondent Spencer Truck Co. transported six shipments of empty pallets without charge.

Based upon the foregoing findings of fact, the Commission concludes that respondent Spencer Truck Co. violated Sections 3664, 3668 and 3737 of the Public Utilities Code and

that it should (1) pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$1,405.95; (2) be ordered to pay to the respondent subhaulers the total sum of \$899.15; (3) pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$500; and (4) cease and desist from transporting shipments of empty pallets without assessing and collecting applicable tariff charges.

The Commission expects that respondent Spencer Truck Co. will proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges and remit the amounts due the other respondents. The staff of the Commission will make a subsequent field investigation thereof. If there is reason to believe that said respondent, or its attorney, has not been diligent, or has not taken all reasonable measures to collect all undercharges and remit all amounts due the other respondents, 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.

ORDER

IT IS ORDERED that:

1. Respondent Spencer Truck Co. shall pay a fine of \$1,905.95 to this Commission on or before the twentieth day after the effective date of this order.

2. Respondent Spencer Truck Co. 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 Spencer Truck Co. 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 Spencer Truck Co. 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.

5. Respondent Spencer Truck Co. shall pay to the respondents hereinafter listed the amounts opposite their respective names, said amounts constituting the balance due such respondents because of the failure of Spencer Truck Co. to pay such respondents the applicable minimum rate in compliance with the restriction contained in its permits:

<u>Respondent</u>	<u>Balance Due</u>
Vernon S. Jenkins	\$307.91
William F. Bowlin	92.14
Thomas N. Cooper and Chester L. Cooper	79.51
Vincent Ganduglia	33.47
J. M. Boss	272.29
Earl Schneider and Jack H. Cornwell	<u>113.83</u>
Total	\$899.15

6. In the event any payments to be made, as provided in paragraph 5 of this order, remain unpaid sixty days after the effective date of this order, respondent Spencer Truck Co. shall file with the Commission on the first Monday of each month thereafter a report setting forth the action taken to pay the subhaulers and the result of such action until payments have been made in full or until further order of the Commission.

7. Respondent Spencer Truck Co. shall cease and desist from paying to subhaulers less than the minimum rates and charges established by the Commission for transportation actually performed by such carriers for Food Machinery Corporation or Niagara Chemical Corporation or customers or suppliers of said corporations.

8. Respondent Spencer Truck Co. shall cease and desist from transporting shipments of empty pallets without assessing and collecting applicable tariff charges.

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 27th day of SEPTEMBER, 1966.

[Signature]
President

[Signature]

[Signature]

[Signature]

Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.