

**ORIGINAL**Decision No. 71355

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the operations,  
rates and practices of CMW  
ENTERPRISES, INC., dba CITY  
TRANSFER & STORAGE CO., a  
corporation.

Case No. 8338  
(Filed January 18, 1966)

Knapp, Gill, Hibbert and Stevens, by Warren N.  
Grossman, for the respondent.

William F. Swanson, for United States Gypsum Co.;  
D. H. Marken, for Charles Pfizer Co., interested  
parties.

B. A. Peeters and J. B. Hannigan, for the Commission  
staff.

O P I N I O N

By order of January 18, 1966, the Commission instituted an investigation into the operations, rates and practices of CMW Enterprises, Inc., doing business as City Transfer & Storage Co.

A public hearing was held before Examiner Fraser on May 17, 1966, at Los Angeles.

Respondent presently conducts operations pursuant to radial highway common carrier, highway contract carrier and city carrier permits. Respondent has a terminal in Cudahy, California. It owns and operates 5 tractors, 6 flat semitrailers, 8 van semitrailers, 1 flatbed trailer, 1 tank trailer and a pickup truck. It employs eight drivers, three in the office and a mechanic. Its total gross revenue for the year ending with the third quarter of 1965 was \$193,574. Copies of the appropriate tariff and distance table were served upon respondent.

On October 26 through 30 of 1964 and March 8 through 12, 1965, a representative of the Commission's Field Section visited respondent's place of business and checked its records for the period from March through August of 1964, inclusive. During said period respondent transported 2,000 shipments. The underlying documents relating to 56 of these shipments were taken from respondent's files and submitted to the Rate Analysis Unit of the License and Compliance Branch of the Commission's Transportation Division. Rate studies were prepared and the following facts adduced.

The first 24 parts (Exhibits 1 and 7) involve the same commodity, shipper, consignee, origin and destination. Respondent assessed a rate of 14 cents (per 100 lbs.) and the staff a rate of 20 1/2 cents. The next 25 counts (Exhibits 2 and 8) were reduced to 24 when the staff deleted Part 2; the alleged violations consist of extending pickups on multiple lot shipments over three or more days and a failure to assess the rail switching charge on each of the 24 parts; Exhibit 3 was introduced to show the dates of pickup on the 24 shipments in Exhibit 2. This information was obtained from the shipper. It was not in the respondent's files. Exhibits 4 and 9 originally had 5 parts which were reduced to 3 when the staff deleted Parts 2 and 3; on Part 1 the respondent used a 20 cent rate, the staff 21 cents; on Part 4 the respondent did not charge for excess unloading time (Item 145, M.R.T. 2) and it failed to assess the switching charge on Part 5. The remaining exhibits concern only two additional parts; the respondent applied a 25 cent rate and the staff a 27 cent rate on the first part (Exhibits 5 and 10); the respondent improperly consolidated two loads on the last part (Exhibits 6 and 11) by failing to comply with the multiple lot requirements of Item 85 M.R.T. 2. The 53 parts in the staff exhibits reflect purported undercharges in the amount of \$2,509.57.

A shipper witness testified for the respondent on the first 24 parts of the staff exhibit. He stated that the shipper thought the commodity was Sericite, a lime rock base which moves on a rail rate of 12 1/2 cents per 100 pounds; the shipper paid 14 cents after a discussion with the respondent; the shipper later reviewed its records and discovered that the staff ratings were correct, the commodity was not Sericite; the error was not detected sooner because the shipping documents are forwarded immediately to another office and were not checked by the Traffic Department. A second shipper witness testified regarding the 24 parts which concern multiple lot shipments not picked up within two days (Exhibits 2 and 8). He stated that more than two loads left every day on respondent's trucks. He pointed out that his clerks were careless and failed to properly record the loads leaving under each master bill; had they done so, there would be no violation. He stated they failed to combine the two or more loads leaving each day under the same master bill. He further testified that at the time these shipments moved the shipper kept a sufficient inventory on hand to supply all carriers hauling from its warehouse; this encouraged the policy of getting trucks out fast without bothering to take time to prepare the required records. The staff rate expert stated on cross-examination that on all counts in Exhibit 8 where the switching charge was omitted by the carrier, the rate assessed was greater than the minimum rate; however, undercharges result because of carrier's failure to comply with the pickup and documentation requirements of the multiple lot rule, Item 85 M.R.T. 2.

Counsel for the Commission staff recommended that respondent be fined under the provisions of Section 3800 of the Public Utilities Code, in the amount of \$2,509.57. No additional fine under Section 3774 was recommended.

After consideration the Commission finds that:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 19-15859, Highway Contract Carrier Permit No. 19-32438 and City Carrier's Permit No. 19-39808.
2. Respondent was served with the appropriate tariff and distance table.
3. Respondent charged less than the lawfully prescribed minimum rate in the 53 instances set forth in the staff exhibits in the amount of \$2,509.57.

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 \$2,509.57.

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 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 \$2,509.57 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 27<sup>th</sup> day of OCTOBER, 1966.

George E. Hoover President  
Frederick B. Hoffmann  
Augusta  
William B. ... Commissioners