

**ORIGINAL**Decision No. 71904

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the rates, opera-  
tions, and practices of RICHARD B.  
GENTRY, dba GENTRY TRUCKING  
COMPANY. )

) Case No. 8479  
) (Filed July 19, 1966)

Richard B. Gentry, for Gentry  
Trucking Company, respondent.  
David R. Larrouy and Richard  
Carlin, for the Commission  
staff.

O P I N I O N

By its order dated July 19, 1966, the Commission instituted an investigation into the operations, rates and practices of Richard B. Gentry, doing business as Gentry Trucking Company.

A public hearing was held in Los Angeles on August 17, 1966, before Examiner DeWolf, to determine whether or not respondent has violated Sections 3704, 3737, 4044, and 4077 of the Public Utilities Code by failing to properly complete, execute, and retain shipping documents applicable to shipments as required in Items 93 and 93.1 of Minimum Rate Tariff No. 7; whether any or all of respondent's operating authority should be canceled, revoked or suspended, or a fine should be imposed; and whether respondent should be ordered to cease and desist from any unlawful activity found. The matter was submitted on the same date.

The parties stipulated that at all times concerned in this proceeding the respondent held Radial Highway Common Carrier

and city carrier permits, and that respondent had received a notice to produce shipping documents concerning his operations.

Respondent presently conducts operations pursuant to Radial Highway Common Carrier Permit No. 19-47473 and City Carrier Permit No. 30-4563 and operates two dump trucks and employs sub-haulers. Respondent has no terminal. He maintains an office and employs three persons who perform the rating and office work. Respondent's total gross revenue for the year ending December 31, 1965, was \$205,544. Copies of the appropriate tariffs and the distance table were served upon respondent.

On March 1 and 2, and June 13, 1966, a representative of the Commission's field section visited respondent's place of business and checked his records for the period from November 1, 1965 through January 31, 1966, and examined documents of 400 shipments. Copies of the underlying documents relating to 20 shipments were made and introduced in evidence as Exhibit 1.

The Commission representative identified the documents in Exhibit 1 and enumerated the defects and omissions in each of said documents and identified by number the omitted information which is required to be furnished by Items 93 and 93.1 of Minimum Rate Tariff No. 7.

Item 93 of the tariff rules and regulations, among other things, specifies the information required to be furnished on freight bills for zone rating purposes. The Commission transportation representative testified that the freight bills in the first 10 parts of Exhibit 1 should have included this information, but that Parts 1 through 10 of Exhibit 1 omitted 95 percent of the required information so that rating of these freight bills was not possible.

Item 93.1 requires that the hourly service freight bill show specific items of information numbered from 1 through 23. The testimony of the Commission representative disclosed that an average of more than 10 of these items was omitted from the 10 freight bills, Parts 11 through 20 of Exhibit 1. He testified these omissions prevented any rating of the shipments.

Staff counsel stated that there was no allegation of any undercharges or of any falsification of records or information or attempts at rate conversions by the respondent carrier in the period covered by this investigation, and that the only violations claimed were the failures to set forth on billing invoices the information necessary for rating, required by the provisions of Items 93 and 93.1 of the tariff.

The staff witness testified that the 20 shipments described by the shipping documents in Exhibit 1 could not be properly rated because of failure to give information on the freight bills. These shipments were handled by the underlying carrier; the documents were then supplied by him to respondent, the overlying carrier, who billed the shipper for the freight due.

The parties are agreed that the only issue here concerns the omissions and defects in the shipping documents prepared by the subhauler. The respondent contends that he is the overlying carrier and is not responsible for the documentation as the information is secured by the underlying carrier and is not available to respondent.

Staff counsel cited the regulations and Minimum Rate Tariff No. 7, Items 93 and 93.1, contending that respondent is responsible for correct billing.

Respondent testified, as did his wife who does book-keeping and rating for the business. Respondent claimed that Part 16 of Exhibit 1 represents a shipment wholly within an incorporated city and Part 20 a shipment wholly within two adjoining cities. Respondent uses subhaulers who prepared the freight bills. He adopted and used these freight bills for billing the shipper. The information required is not available to him as he is the overlying carrier. Respondent testified that he did not receive revised freight bill forms from the truck association so that the subhaulers could be instructed in getting the information required at the time of starting the haul. Respondent testified that they are using new billing forms now and that he believes these new forms comply with Items 93 and 93.1 and are sufficient for rating purposes.

Respondent requested the Commission to take official notice of the effective date of Items 93 and 93.1 of Minimum Rate Tariff No. 7, being October 16, 1965, and that the first freight bills in Exhibit 1 were issued on November 1, 1965, within two weeks after said effective date; and to take official notice of Petition for Modification and Revision of Tariff No. 136 in Case No. 5437, filed on August 12, 1966, five days previous to the date of this hearing. Respondent alleged that there has been confusion in getting printed forms and in getting the information

required for the drivers to comply with Items 93 and 93.1 that the omissions made in the billing by the drivers are not willful, and that respondent had and has no intent to violate any provision of the tariff.

Staff counsel recommended that respondent be fined \$200 and be ordered to desist from further violations.

After consideration, the Commission finds that:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 19-47473 and City Carrier Permit No. 30-4563.
2. Respondent was served with the appropriate tariffs and distance table.
3. Respondent has failed to properly document shipments from November 1, 1965 to January 31, 1966, in the instances set forth in Exhibit 1, in violation of Minimum Rate Tariff No. 7, Items 93 and 93.1.
4. Respondent is fully responsible for the correct billing by the underlying carrier, including paragraph "e" of Item 93.1 requiring preparation of an additional copy of shipping order and freight bill.

The Commission concludes that:

1. Respondent violated Sections 3704, 3737, 4044 and 4077 of the Public Utilities Code.
2. Respondent's operating authority should be suspended, pursuant to Sections 3774 and 4112 of the Code, for a period of one year with the execution thereof deferred during said one-year period. If, at the end of the one-year period, the Commission is

satisfied that respondent is in substantial compliance with the documentation requirements in issue, the suspension will be vacated without further order of the Commission.

The staff of the Commission will make a subsequent field investigation to determine whether respondent is complying with the documentation requirements in issue. If there is reason to believe that respondent is continuing to violate said provisions, the Commission will reopen this proceeding for the purpose of formally inquiring into the circumstances and for the purpose of determining whether the one-year suspension or any further sanctions should be imposed.

O R D E R

IT IS ORDERED that:

1. Radial Highway Common Carrier Permit No. 19-47473 and City Carrier Permit No. 30-4563 issued to Richard B. Gentry, doing business as Gentry Trucking Company, are hereby suspended for a period of one year; provided, however, that the execution thereof is hereby deferred pending further order of this Commission. If no further order of this Commission is issued affecting said suspension within one year from the date of issuance of this decision, the suspension shall be automatically vacated.

2. Respondent shall cease and desist from violating the documentation provisions of the Commission's minimum rate tariffs.

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 24<sup>th</sup> day of JANUARY, 1967.

[Signature]  
President

[Signature]

[Signature]

[Signature]

Commissioners

Commissioner WILLIAM SYMONS, JR. did not participate in the disposition of this proceeding.