

ORIGINAL

Decision No. 71970

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 JOHN R.)
 RICHARDSON and EARL RICHARDSON,)
 dba RICHARDSON BROS.)

Case No. 8327
 Filed January 11, 1966

John and Earl Richardson, in propria persona.
Harry T. Hansen, for Gilroy Foods, Inc.,
 interested party.
V. V. MacKenzie and E. E. Cahoon, for the
 Commission staff.

O P I N I O N

The order instituting this investigation alleges that respondents may have violated Sections 3664 and 3737 of the Public Utilities Code. Duly noticed public hearing was held before Examiner Power at Hollister on February 9, 1966 and the matter was submitted.

The specifications (under the general charge) alleged in the order of investigation were charging and collecting rates less than those applicable, transporting without charge, improper consolidation and inadequate documentation. Various items of Minimum Rate Tariffs Nos. 2 and 8 are involved.

The respondents have a radial highway common carrier permit issued October 30, 1950 and a petroleum contract carrier permit issued August 26, 1958, and they were served with Minimum Rate Tariffs Nos. 2 and 8, Distance Table No. 5 and all supplements and corrections thereto. The respondents have a terminal located

at Hollister; operate 9 tractors and 27 trailers; employ 9 drivers, 1 mechanic and 2 clerks (the copartners are active in equipment dispatching and business management); and have reported a gross operating revenue of \$273,710 for the year ending September 30, 1965.

In support of its charges, the staff introduced a transportation representative who had performed a field investigation. This included a review of the respondents' transportation records for the period June 15, 1964 to December 15, 1964, photostating documents and developing facts (commodity descriptions, points of origin and destination, shipment weights, and rates and charges assessed, if any) that should have been, but were not, placed on such documents.

The respondents stipulated to the truth and accuracy of certain facts covered by supporting shipment data secured from the shipping files and from personnel of Gilroy Foods, Inc. and Tres Pinos Grain and Supply.

The evidence concerning transportation performed for Gilroy Foods, Inc. showed, among other things, a large number of short-haul shipments performed in the immediate vicinity of Gilroy (Parts A-9 through A-82 of Exhibit 4). The respondents' charges for these shipments were collected on the basis of hourly rates. The Commission witness testified to the respondents' and shippers' frequent use of code numbers to describe commodities involved in these hauls. He explained that some of the code numbers related to commodities described to him as "onion and garlic powder" and "onion and garlic chips." These latter commodities were smaller in size than a thumb nail and were subjected to a specialized

drying process. With regard to "in process garlic", the witness testified he was shown a sample of the commodity which was named "flaked garlic". The term "finished onion", which sometimes appeared on respondents' documentation, was determined to be "chipped onion".

A rate expert testified that this traffic was subject to Minimum Rate Tariff No. 2 and that the use of hourly rates was not authorized. He further testified that, although dried onions are exempt from the provisions of the tariff, onion chips are specifically named in Item No. 320 of this tariff and that dried onion chips transported in drums are ratable under that item. He also testified that garlic chips are similarly ratable.

The rate witness was questioned concerning this Commission's jurisdiction over the short-haul trucking of this traffic when subsequent interstate movement by rail car occurred. This witness advised that rulings have been issued by the Interstate Commerce Commission pertaining to exempt operations under Sections 203(b)(6) of Part II of the Interstate Commerce Act wherein published commodity lists specifically exempt the commodities in question. In such circumstances, he stated, this Commission has taken jurisdiction. We find that it is unnecessary to determine this jurisdictional issue (see State Corporation Commission v. Bartlett and Co., 338 Fed.2d 495), for the evidence in this record does not justify a finding that the transportation in question was interstate. The movements were within California. Although it is possible that for some of the goods the ultimate destination was at one time or another expected to be outside California, there was no

real demonstration of any such fact. At most, it appears that some of the goods were subject to further movement in interstate or for foreign commerce in the event appropriate markets developed.

Flat charges were collected for six shipments (Parts A-1 through A-4 of Exhibit 4) of onions transported from Gilroy Foods, Inc. to Los Angeles. The rate expert testified that this transportation was subject to Minimum Rate Tariff No. 8, which did not authorize flat charges nor split delivery privileges without proper documentation. In connection with a question concerning the rate exempt status of onions hauled from a packing shed to a cold storage plant to be held for interim storage for subsequent movement to a cannery, this witness stated the tariff rules do not allow the exemption unless the shipper certifies on the shipping document covering the transportation that the ultimate destination of the shipment is a cannery.

The evidence also showed the transportation of six shipments covering rotivators, tractors, a garlic planter, and empty sacks over the public highway for Gilroy Foods, Inc. without charge (Parts A-8 through A-89 and A-91 and A-92 of Exhibit 4). There were four other shipments (mostly machinery) wherein transportation charges collected on the basis of hourly rates were less than applicable distance rates in Minimum Rate Tariff No. 2 (Parts A-83, A-84, A-85 and A-90 of Exhibit 4).

Most of the shipments of Tres Pinos Grain and Supply were improperly consolidated (Exhibit 5). This firm had facilities in both Hollister and Tres Pinos. Many shipments of salt and cottonseed products were transported under billings showing only

one point of destination; however, in most instances, portions of each shipment were delivered to each establishment located at Tres Pinos and Hollister. There was no documentation issued to comply with tariff rules governing the use of split delivery privileges; therefore, each delivery constituted a separate shipment ratable under Minimum Rate Tariff No. 2.

A representative of the parent company of Gilroy Foods, Inc. stated, with reference to the shipments of fresh onions going from Gilroy Foods, Inc. to Federal Ice and Cold Storage, Los Angeles: (1) upon arriving at Gilroy Foods, Inc. from the fields, onions were graded as to size and texture and an estimate was made as to the quantity of onions that would be required for market as fresh vegetables; (2) the original intent regarding these shipments was to place the onions in cold storage until such time as markets developed; (3) some of these onions did move into markets, but the major portion began to deteriorate, making them unfit for market as a green vegetable, and these were returned from cold storage to Gilroy Foods, Inc. for dehydration.

The shipper referred to "EXCEPTION (b)" of Item No. 40, Minimum Rate Tariff No. 8, which provides that rates in this tariff do not apply to transportation of "Fresh or green fruits, nuts (in the shell or field shelled), fresh or green vegetables, or mushrooms, as described herein when transported from the field or point of growth to a packing plant, cold storage plant, or a packing shed, nor when transported between packing sheds subject to

Notes 2, 3 and 5". Note 2 to EXCEPTION (b) includes the following definitions:

- "(a) Packing shed or Packing Plant: - Facilities maintained for assembling, sorting, grading, shelling, hulling, or packing the commodity for shipment.
- "(c) Cold Storage Plant: - Facilities maintained for the storage of commodities under refrigeration.
- "(d) Cannery: - Facilities maintained for the processing of commodities at which the commodities are canned, preserved, dried, frozen, pickled, brined, or otherwise processed into manufactured products.
- "(h) In Their Natural Form: - Means in the original form at the time of harvest, not further processed for human consumption than topping, trimming, washing, coloring, fumigating, or such processing as does not alter the natural shape or form of the commodity."

Transportation of fresh vegetables to a cold storage plant from a point other than the field is not exempt from the provisions of Minimum Rate Tariff No. 8 unless it is intended that there will be a subsequent movement to a cannery, and the shipping document bears a certification by the shipper to that effect. On this record it is clear that the intent of the shipper was that all of the onions which did not deteriorate in storage would move to market, not to a cannery.

The shipper again refers to EXCEPTION (b) of Item No. 40, Minimum Rate Tariff No. 8, with regard to the 74 short hauls in the vicinity of Gilroy between Gilroy Foods, Inc. and leased warehouses. The evidence shows that Minimum Rate Tariff No. 8 does not apply to this specific transportation; instead, the involved commodities being onions and garlic that were processed into chips and powder and specifically named in Item 320 of Minimum Rate Tariff No. 2 and are subject to regulation under the provisions of that tariff.

The Commission finds that:

1. John R. Richardson and Earl Richardson, dba Richardson Bros., were served with appropriate tariffs and distance table.

2. The staff rating, as amended at the hearing, of the transportation covered by Exhibit 4 is correct.¹

3. The staff rating of the transportation covered by Exhibit 5 is correct.

4. Said respondents have violated Item No. 320 of Minimum Rate Tariff No. 8 by charging and collecting a rate less than the applicable minimum rate and violated Items Nos. 500 and 505 and Supplement No. 63 of Minimum Rate Tariff No. 2 by charging and collecting rates less than the applicable minimum rate and failing to charge and collect any rate.

5. Said respondents have improperly consolidated shipments in violation of Items Nos. 60 and 50 of Minimum Rate Tariffs Nos. 2 and 8, respectively.

6. Said respondents failed to complete, execute and retain shipping documents as required by Item No. 255 of Minimum Rate Tariffs Nos. 2 and 8.

7. The violations set forth in Findings 4 and 5 involve undercharges of \$3,850.36 on shipments transported for Gilroy Foods, Inc. and undercharges of \$373.82 for Tres Pinos Grain and Supply.

¹ Based on evidence presented by Gilroy Foods, Inc., the staff rate expert, during the hearing, revised the rating shown in Parts A-27, A-29, A-47, A-83, A-85 and A-92 of Exhibit 4.

Based on the foregoing findings of fact the Commission concludes that respondents have violated Sections 3664 and 3737 of the Public Utilities Code.

A fine of \$500 pursuant to Section 3774 of the Public Utilities Code and a fine equal to the amount of undercharges hereinabove found, pursuant to Section 3800 of said Code, should be imposed.

The Commission expects that respondents 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 respondents and the results thereof. If there is reason to believe that respondents or their 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.

John R. Richardson and Earl Richardson are placed on notice that the documentation requirements in the Commission's minimum rate tariffs are integral and important parts of such tariffs. They are as much to be observed as any other provisions of such tariffs.

O R D E R

IT IS ORDERED that:

1. Respondents shall pay a fine of \$4,724.18 to this Commission on or before the twentieth day after the effective date of this order.

2. Respondents 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. Respondents 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, respondents 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 results of such action, until such undercharges have been collected in full or until further order of the Commission.

4. Respondents 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 each respondent. The effective date of this order shall be twenty days after the completion of such service upon either respondent.

Dated at San Francisco, California, this 7th day of FEBRUARY, 1967.

[Signature] President
[Signature]
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[Signature] Commissioners