

ORIGINAL

Decision No. 71991

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 OSBORNE H.
LANGFORD.)

Case No. 8476
Filed July 19, 1966

Osborne H. Langford and Ralph Berg,
for 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 insti-
tuted an investigation into the rates, operations and practices of
Osborne H. Langford, an individual, hereinafter referred to as
respondent.

Public hearing was held before Examiner Mooney at Los
Angeles on September 20, 1966.

Respondent conducts operations as a dump truck carrier
pursuant to radial highway common carrier and city carrier permits.
Respondent has a terminal in Northridge, California. He owns and
operates six tractors, seven trailers and one truck. In addition
to his wife and daughter who assist with office duties, respondent
employs six drivers and one maintenance man. Part of his for-hire
transportation is performed by subhaulers. He has a subhaul bond
on file with the Commission. Respondent's gross operating revenue
for the last three quarters of 1965 and the first quarter of 1966
was \$149,732.77. Respondent was served with Minimum Rate Tariff

No. 7, Minimum Rate Tariff No. 17 and Directory 1, together with all supplements and additions thereto.

On various days during April and June 1966, a representative of the Commission's field section visited respondent's place of business and respondent's accountant and checked all of respondent's records for the period from January 1 through March 31, 1966. The representative testified that approximately 300 freight bills covering for-hire dump truck transportation by respondent in his own equipment or by subhaulers on his behalf were issued during the review period and that none of the freight bills complied with applicable documentation requirements. He stated that he made true and correct copies of 20 of the freight bills and that they are all included in Exhibit 1 as Parts 1 through 20 thereof. The witness testified that in addition to the aforementioned transportation, respondent was also engaged in performing transportation on private property and subhauling for other carriers which is not involved in the investigation herein.

None of the documents in Exhibit 1 include the time factor information required to be shown on hourly service freight bills by paragraph (c) of Item 93.1 of Minimum Rate Tariff No. 7. In addition certain of the documents do not include other information required by paragraph (c). The representative testified that although the commodity transported is not shown on the documents in Parts 2, 7 and 20 of Exhibit 1, he was informed by respondent's wife that the documents in Parts 2 and 20 covered the transportation of demolition material¹ and that the document in Part 7 covered the transportation of dirt. He stated that because of

1 Item 320 of Minimum Rate Tariff No. 7 includes demolition material in the description of debris which is described as follows: "Debris: From street or highway maintenance; from demolition of buildings and structures."

the missing information, it was not possible to determine the applicable minimum rates from the freight bills and that no additional documents were attached to the freight bills. He pointed out that the transportation covered by 11 of the parts in Exhibit 1 was handled by respondent's own equipment and the balance was handled by subhaulers and that the transportation covered by three of the parts was subject to the Highway Carriers' Act and the balance was subject to the City Carriers' Act.

Respondent and an employee of respondent testified as follows: The tariff regulations regarding documentation are complex and extremely detailed; the documents are prepared by the drivers who, in most instances, do not complete them properly although they are instructed to do so; when a subhauler is used, the subhauler is the one who is on the job, and only the subhauler has the information necessary to fill out the document; and the subhauler and not the overlying carrier should be held responsible for any errors in documentation prepared by the subhauler.

With respect to the question of whether respondent is responsible for errors or omissions in the hourly service freight bill when the transportation was actually performed by the subhauler and the subhauler prepared the document, we have consistently held that the overlying carrier engaged by the shipper is not relieved of responsibility for such errors or omissions irrespective of who prepares the document.

It was brought to the Commission's attention that it now has several proposals before it in Case No. 5437 to revise the documentation requirements in issue. This fact is not relevant or

material to this case. We are here concerned with the question of whether or not respondent complied with the documentation rules that were in effect at the time the transportation covered by the documents in Exhibit 1 moved and not with the merits of proposals now before the Commission in other proceedings to revise said rules.

As to the penalty to be assessed, we concur with the recommendation by the Commission staff that respondent be directed to cease and desist from further violations of the documentation requirements. The failure to comply with any directive, order or rule of the Commission is a serious matter and will not be overlooked. Respondent's operating authority also will be made subject to a one-year suspension if further violation of the documentation requirements occurs during the following one-year period.

The Commission finds that:

1. Respondent operates pursuant to radial highway common carrier and city carrier permits.
2. Respondent was served with Minimum Rate Tariffs Nos. 7 and 17 and Directory 1, together with all supplements and additions thereto.
3. Respondent is responsible for compliance with the documentation requirements of Minimum Rate Tariff No. 7, irrespective of whether the documentation is prepared by respondent or by the subhauler who performed the transportation.
4. Respondent has not properly completed and executed "Hourly Service Freight Bills" as required by paragraph (c) of Item 93.1 of Minimum Rate Tariff No. 7 in the instances set forth in Exhibit 1.

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. 19-25853 and City Carrier Permit No. 19-40367 issued to Osborne H. Langford, an individual, 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 date completion of such service.

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

John E. Mitchell
President
William W. Beard
Augusta
William Sproull
Fred P. Monahan
Commissioners