

EM

Decision No. 72292

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion into the operations,)
rates, and practices of ARVO LYLY,)
ARNOLD LYLY, and ALVIN LYLY, dba)
ARVO LYLY & SONS, a partnership.)

Case No. 8576

E. H. Griffiths, for respondents.
S. M. Bolkan and E. H. Hjelt, for
the Commission staff.

O P I N I O N

By its order dated January 4, 1967, the Commission instituted an investigation into the rates, operations and practices of Arvo Lyly, Arnold Lyly and Alvin Lyly, dba Arvo Lyly & Sons, a partnership, hereinafter referred to as respondents.

Public hearing was held before Examiner Porter at San Francisco on February 15, 1967, and the matter was submitted.

Respondents presently conduct operations pursuant to a radial highway common carrier permit. Respondents have a terminal at Coyote Trailer Park, Ukiah, California. As of April 1966 they owned and operated three trucks and three trailers. The three partners do the driving and Mrs. Arvo Lyly does the bookkeeping. The operating revenue for the fourth quarter of 1965 and the first three quarters of 1966 amounted to \$60,211. It was stipulated that the appropriate tariff and distance tables were served upon respondents.

On various days of April 1966, a representative of the Commission's Field Section visited respondents' place of business and checked all of respondents' records for the period July 1, 1965

through January 31, 1966. Nineteen shipments were copied and introduced in evidence as Exhibit No. 1. The staff presented evidence that the carrier failed to assess off-rail charges, rated certain shipments as split pick up or split delivery shipments when it did not have prior to or at the time of pick up written instructions from shippers to provide such services. Respondents, in addition, applied rail footage rates on shipments of lumber without observing the minimum footage governing such rates.

The staff rate expert testified that undercharges in the amount of \$1,361.49 resulted, as reflected by Exhibits 2 and 3.

The Commission finds that:

1. Respondents operate pursuant to a radial highway common carrier permit.
2. Respondents were served with Minimum Rate Tariff No. 2 and Distance Table No. 5, together with all supplements and additions thereto.
3. Respondents did not comply with the requirements of Minimum Rate Tariff No. 2 in regard to documentation requirements before applying split delivery or split pick up rates.
4. The respondents charged less than the lawfully prescribed minimum rates in the instances set forth in Exhibits 2 and 3 resulting in undercharges in the amount of \$1,361.49.

The Commission concludes that respondents violated Sections 3667 and 3668 of the Public Utilities Code and should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$1,361.49 (the amount of the undercharges shown in Exhibits Nos. 2 and 3).

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, 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.

O R D E R

IT IS ORDERED that:

1. Respondents pay a fine of \$1,361.49 to this Commission on or before the fortieth 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 (Exhibits Nos. 2 and 3) 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 result 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 respondents. The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 11th day of APRIL, 1967.

[Signature]
President

[Signature]

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Commissioners