

**ORIGINAL**

Decision No. 72513

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the operations, rates  
and practices of JOHN LIVACICH PRODUCE,  
INC., a corporation.

Case No. 8604

John Livacich, for respondent.

Elinore C. Morgan, Counsel, for the  
Commission staff.

O P I N I O N

By its order dated March 14, 1967, the Commission instituted an investigation into the operations, rates and practices of John Livacich Produce, Inc.

A public hearing was held before Examiner Gravelle on April 12, 1967, at San Bernardino.

Respondent presently conducts operations pursuant to Radial Highway Common Carrier Permit No. 36-3582, has a terminal in San Bernardino, owns and operates two tractors and ten trailers and employs two persons. Its gross operating revenue for the year 1966 was \$72,081. Copies of Minimum Rate Tariff No. 8 and Distance Table No. 5 were served upon respondent.

On September 20, 22, and 26 through 30, 1966, a representative of the Commission's Field Section visited respondent's place of business at 936 Third Street, San Bernardino, and checked its records for the period from April through August 1966, inclusive. The underlying documents relating to certain shipments during said period were taken from respondent's files, photocopied, and said photocopies were transmitted to the Rate Analysis Unit of the Commission's Transportation Division. The photocopies were

introduced in evidence as Exhibit No. 1. Based upon the data taken from the photocopies and supplemental information supplied by the Field Section representative, rate studies were prepared and introduced in evidence as Exhibits Nos. 4 through 8. Said exhibits reflect purported underpayments to subhaulers in the amount of \$1,973.64.

Exhibit No. 9 is a copy of respondent's permit. It contains the following restriction:

"Whenever permittee engages other carriers for the transportation of property of John Livacich Produce, Inc. or customers or suppliers of said corporation, permittee shall not pay such carriers less than 100% of the applicable minimum rates and charges established by the Commission for the transportation actually performed by such other carriers."

The transportation reflected by Exhibits Nos. 1 and 5 through 8 involves instances in which respondent deducted from other carriers hauling goods for respondent, payment to the extent of 15 and in some cases 25 percent of the applicable charge. These deductions were based upon a "trailer rental" assessed by respondent; however, in all cases in those exhibits the trailers were not those of respondent but were either owned by the transporting carrier or some third party. There were also some instances of rate error due to incorrect computation of mileage and two cases (Exhibit No. 4) of nonpayment of any transportation charges.

There is no conflict in the evidence regarding the fact of the underpayments in Exhibits Nos. 1 and 4 through 8. Testimony of the other carriers involved and of John Livacich indicates that the deduction for "trailer rental" arose due to respondent's desire to have its own trailers utilized whenever possible and the desire of the other carriers to utilize their own equipment whenever possible. Respondent, before the imposition of the quoted

restriction in its permit, had made it a practice to require other carriers transporting its property to use its trailers and deducted therefor a 25 percent "trailer rental" fee. The other carriers, when they acquired trailer equipment of their own, approached respondent and offered to transport its goods regardless of whose trailers were used for a 15 percent "trailer rental" fee; respondent agreed to this practice.

Respondent testified that this practice was known to the Commission staff as of November 19, 1965, but that he was not informed it was improper although he was at that time admonished regarding other improper practices. He further testified, as the president and sole shareholder of respondent, that he did not consider the "trailer rental" deduction a violation of respondent's permit restriction; however, the staff representative testified that in an interview with Mr. Livacich during his investigation Mr. Livacich admitted said practice was "spurious".

The deduction of "trailer rental" fees as shown in the exhibits is a clear violation of the restriction of the permit; however, to order payment of the deductions to the other carriers would be to remunerate those very persons who suggested the violation which is the main subject matter here. We will therefore not order payment to the other carriers by respondent but will impose a fine of \$2,500 upon it so that it will not receive the benefit of its violation of the permit restriction and we will order it to cease and desist from its unlawful practices. Mr. Livacich testified that payment to the carrier who transported the loads in Parts 1 and 2 of Exhibit No. 4 would be made. We will so order.

After consideration the Commission finds that:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 36-3582.

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2. Respondent was served with the appropriate tariff and distance table.

3. Respondent's permit contains a restriction requiring payment of the full minimum rate and charge to other carriers when transporting respondent's property.

4. Respondent paid other carriers less than the lawfully prescribed minimum rate in the instances as set forth in Exhibits Nos. 4 through 8 with the exception of Part 3 of Exhibit No. 4, resulting in underpayment to said other carriers in the amount of \$1,973.64.

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 3774 of the Public Utilities Code in the amount of \$2,500; further, that respondent should cease and desist from the unlawful practices mentioned herein and should pay to C. Chester Towle the sum of \$117.60 for transportation performed for which payment was not made.

O R D E R

IT IS ORDERED that:

1. Respondent shall pay a fine of \$2,500 to this Commission on or before the twentieth day after the effective date of this order.

2. Respondent shall pay the sum of \$117.60 to C. Chester Towle for the transportation reflected by Parts 1 and 2 of Exhibit No. 4 on or before the twentieth day after the effective date of this order.

3. Respondent shall cease and desist from making deductions for trailer rentals when employing other carriers for the

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transportation of its property and shall fully comply with the restriction contained in its permit and shall cease and desist from any other unlawful practices.

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 31<sup>st</sup>  
day of MAY, 1967.

*John E. Hartzell*  
President  
*Stallman W. Bennett*  
*Augusta*  
*William J. Lyons*  
*Joe P. Moussey*  
Commissioners