

ORIGINAL

Decision No. 72983

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates, and practices of LEWIS W.
MURPHY, a sole proprietorship.

Case No. 8640

Mervyn C. Hoover, for respondent.
Clark Smith, for El Dorado-Sierra Lumber Company,
interested party.
Sergius M. Boikan, Counsel, and E. H. Hjelt, for
the Commission staff.

O P I N I O N

By its order dated May 31, 1967 the Commission instituted an investigation into the operations, rates and practices of Lewis W. Murphy, hereinafter referred to as respondent.

A public hearing was held before Examiner Porter June 27, 1967, in Sacramento, and the matter was submitted.

Respondent presently conducts operations pursuant to a radial highway common carrier permit. Respondent has a terminal at Carmichael, California. As of November 1966 he owned one tractor and two trailers. He has no employees. The operating revenue for the four quarters of 1966 amounted to \$14,000. A copy of the appropriate tariff and distance table was served upon respondent.

A representative of the Commission's Field Section visited respondent's place of business and checked all of respondent's records for the period April 1, 1966 to September 1, 1966. Documents covering twelve shipments were copied and introduced as Exhibit No. 1. The staff presented evidence that respondent included, in multiple-lot shipments, lots picked up later than the second calendar day following the pickup of the first lot included in those shipments

in violation of Item 85 of Minimum Rate Tariff No. 2 and failed to assess charges for transportation from railhead to off-rail destinations of shipments pursuant to Item 210 of Minimum Rate Tariff No. 2.

The staff rate expert testified that undercharges in the amount of \$1,637.88 resulted as reflected by Exhibit No. 3.

The respondent testified that the shipper herein involved was his only shipper and that he was in effect forced to perform this transportation at the lesser rate to retain the business.

The Commission finds that:

1. Respondent operates pursuant to a radial highway common carrier permit.

2. Respondent was served with Minimum Rate Tariff No. 2 and Distance Table No. 5, together with all supplements and additions thereto.

3. Respondent did not comply with the requirements of Minimum Rate Tariff No. 2, Item 85, in regard to multiple-lot shipments.

4. Respondent failed to assess off-rail charges pursuant to Item 210 of Minimum Rate Tariff No. 2.

5. Respondent charged less than the lawfully prescribed minimum rates in the instances set forth in Exhibit No. 3, resulting in undercharges in the amount of \$1,637.88.

The Commission concludes that respondent violated Sections 3737, 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 \$1,637.88 (the amount of the undercharges shown in Exhibit No. 3).

The Commission expects that respondent 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 respondent and the results thereof. If there is reason to believe that respondent or his attorney has not been diligent, has not taken all reasonable measures to collect all undercharges, or has 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. Respondent shall pay a fine of \$1,637.88 to this Commission on or before the fortieth day after the effective date of this order.
2. Respondent shall take such action, including legal action, as may be necessary to collect the amounts of undercharges set forth herein (Exhibit No. 3) and shall notify the Commission in writing upon the consummation of such collections.
3. Respondent 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, respondent 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. Respondent 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 respondent. The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 29th day of AUGUST, 1967.

Peter E. Mitchell
President
William B. Bennett
Augustus
William J. ...
Paul P. ...
Commissioners