

ORIGINALDecision No. 75189

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates, charges and practices of
American Transfer Company, a
corporation.

Case No. 8800
(Filed May 7, 1968)

Marvin Handler, of Handler, Baker and Greene,
for respondent.
C. Fred Imhof, for Industrial Asphalt Co.;
C. R. Nickerson, for Pacific Coast Tariff
Bureau, interested parties.
Sergius M. Boikan, Counsel, and J. B. Hannigan,
for the Commission staff.

O P I N I O N

By its order dated May 7, 1968, the Commission instituted an investigation into the operations, rates and practices of American Transfer Company for the purpose of determining whether it has violated Sections 494 or 532 of the Public Utilities Code by charging, demanding, collecting or receiving different compensation than the applicable rates and charges specified in its tariff schedules; and whether respondent has violated Sections 3737, 3664 or 3667 of the Public Utilities Code by charging, demanding or receiving a lesser compensation for transportation and services than that established by the Commission in Minimum Rate Tariff No. 2.

A duly noticed public hearing was held before Examiner Foley on July 12, 1968 in San Francisco, and the matter was submitted.

It was stipulated that American Transfer Company (American) operates as a petroleum irregular route carrier under a certificate

issued by Decision No. 44372 in Application No. 31195; and as a highway common carrier under Decision No. 63024 and Decision No. 65633 in Application No. 65633. American also operates as a radial highway common carrier under Permit No. 10-4632; as a highway contract carrier pursuant to Permit No. 10-4633; and as a city carrier under Permit No. 10-5820. It was also stipulated that at all times pertinent to the staff's investigation American was served with the appropriate Commission tariffs.

Staff Exhibits Nos. 1-4 consist of copies of various freight bills made by the staff during its investigation and review of American's operations. This investigation was conducted during 1967 at the offices of American in Fresno during the following dates: May 22 to 26; June 12 to 16; June 19 to 23; October 17 to 20; and October 24 to 27.

Staff Exhibits Nos. 5-A through 5-S consist of summaries of the shipping data contained in the freight bills and statements as to the applicable tariff rates for the shipments covered by the data.

American conceded that the undercharges and overcharges as computed by the staff and summarized in Exhibits Nos. 5-A, 5-C, 5-D, 5-F, 5-I, 5-K, 5-L, 5-M, 5-N, 5-O, 5-P, 5-Q, 5-R, and 5-S are correct.

It was further stipulated that the undercharges as computed by the staff in Exhibit No. 5-B (Cal-Sesame Producers, Inc.) are correct, but that in the event that the U. S. District Court for the Northern District of California determined in Civil Action No. 94114, Santa Fe v. P.U.C. of the State of California, that the Commission did not have jurisdiction over these shipments,

Exhibit No. 5-B would be stricken from Case No. 8800. The Commission takes notice that the District Court has determined that the Commission does lack jurisdiction over these rates. Therefore, this exhibit is stricken from this proceeding.

With regard to Exhibit No. 5-E (Corn Products Co.) American conceded that the undercharges contained in Parts 1 and 2 are correct. During the course of the hearing the staff agreed to strike the undercharges shown in Parts 3 and 4 of Exhibit No. 5-E upon presentation of evidence that the staff misconstrued a multiple lot shipment.

American conceded that undercharge stated in Exhibit No. 5-G (Thomas O. Higgason & Associates) is correctly computed, but it disputed the Commission's jurisdiction. Subsequently, American and the Commission staff agreed that the shipment was within the Commission's jurisdiction, and the objection was withdrawn. Notice was provided by letter from staff counsel which was approved by American's attorney. This letter has been incorporated in the official record as Exhibit No. 10. Therefore, the tariff rate and charge for the shipment set out in Exhibit No. 5-G is correct in all respects.

With regard to Exhibit No. 5-H American conceded the correctness of the undercharges set forth in all parts except the undercharge set out in Part 7. American maintained that the correct rate for Part 7 should be 52 cents per 100 pounds while the staff asserted that 54 cents was proper. The staff, by letter dated July 29, 1968, states that it now agrees with American that the 52 cents is correct. This letter has been incorporated into the official record as Exhibit No. 10. During the hearing staff further conceded that its calculation of undercharges for excess loading in

the amounts of \$48.40 and \$61.60 was incorrect and should be stricken. Therefore, the undercharge applicable to Part 7 of Exhibit No. 5-H is revised to \$46.10.

As a result of the above stipulations the only dispute between the staff and American relates to Exhibit No. 5-J, concerning an alleged undercharge of \$87.88 for one shipment performed for Lion Packing Co. American alleges that the shipment was a component part of a larger shipment made under a master bill of lading. American's witness explained that the sub-bills were dated the same day but that careless documentation resulted in the master bill of lading not having the date on it that it should have. American's witness admitted that he had not investigated to see if a typographical error had been made and that the same date which appears on the sub-bills is required by the applicable tariff to be set forth on the master bill of lading. We conclude that the staff position is correct.

The staff recommends that the undercharges be collected, the overcharges be refunded, and that American be required to pay a fine in the amount equal to the undercharges and a punitive fine of \$2,000.

American's position is that the undercharges and overcharges were unintentional and that they resulted from typographical errors and from errors by some of the shippers' rating and billing departments. American's vice president, Mr. Kinnard, presented testimony in mitigation. He stated that since the Commission's investigation of American in Case No. 7323 (Decision No. 67709, dated August 11, 1964) American had replaced the employee responsible for rating. This replacement failed, however, to perform the

rating and billing functions adequately, and upon the initiation of this proceeding, American decided to seek a new rate expert. As a result a new rate expert had been employed for about two months before the date of the hearing. In addition, the billing department was enlarged. Mr. Kinnard stated that an increase in the volume of business done by American had also contributed to the errors brought out by the staff's investigation. He testified that with regard to many of the stipulated items American has already issued balance due bills and that many of them have been paid. American also intends to control its rating and billing functions more closely by holding monthly meetings to review these activities.

Since the record shows that the errors by American resulted primarily through carelessness and did not involve solicitation of traffic through undercharges, American will be required to pay a punitive fine of \$1,000. ✓

After consideration the Commission makes the following findings of fact:

1. Respondent American Transfer Company operates under permits and certificates granted by this Commission as previously stated.
2. Respondent was served with the appropriate tariffs and distance tables.
3. The staff rating and documentation requirements are correct as to the undercharges and overcharges set out in Exhibits Nos. 5-A, 5-C, 5-D, 5-E (Parts 1 and 2 only), 5-F, 5-G, 5-H (Parts 1-6 and 8-10), 5-I, 5-K, 5-L, 5-M, 5-N, 5-O, 5-P, 5-Q, 5-R, and 5-S.
4. It lacks jurisdiction of the undercharge alleged in Exhibit No. 5-B.

5. The undercharge set forth by the staff in Part 7 of Exhibit No. 5-H is correct as revised by the staff to eliminate the excess unloading charges and to apply the 52 cents per 100 pounds rate.

6. The staff rating as to Exhibit No. 5-J is correct.

Based upon the foregoing findings of fact, the Commission concludes that:

1. American Transfer Company, a corporation, has violated Sections 494, 532, 3664, 3667 and 3737 of the Public Utilities Code as demonstrated by the following undercharges and overcharges from Exhibits Nos. 5-A and 5-C through 5-S:

<u>Exhibit No.</u>	<u>Part No.</u>	<u>Undercharges</u>	<u>Overcharges</u>
5-A	1-25	\$ 860.00	\$ 11.39
5-C	1-12	182.79	-
5-D	1	127.50	-
5-E	1 and 2	38.84	-
5-F	1-9	129.21	-
5-G	1	273.08	-
5-H	1-10	463.03	-
5-I	1	80.55	-
5-J	1	87.88	-
5-K	1-18	71.11	27.54
5-L	1 and 2	25.43	-
5-M	1-41	61.49	676.35
5-N	1 and 2	-	32.94
5-O	1-8	39.50	53.33
5-P	1-14	890.08	-
5-Q	1-8	84.02	-
5-R	1	44.55	-
5-S	1 and 2	<u>474.26</u>	-
		\$3,933.32	\$801.55

2. The count concerning the undercharge alleged in Exhibit No. 5-B should be dismissed.

The respondent will be fined pursuant to Section 3800 of the Public Utilities Code, in the amount of \$3,933.32, and an additional fine, pursuant to Sections 2100 and 3774 of the Public

Utilities Code, in the amount of \$1,000 will be assessed against it.

The Commission expects that respondent will proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges and to refund the overcharges. 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 its attorney, has not been diligent, or 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 \$4,933.32 to this Commission on or before the fortieth day after the effective date of this order.
2. Respondent shall refund all overcharges as previously set forth herein.
3. 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 law and the regulations of this Commission.

4. Respondent shall cease and desist from charging, demanding, collecting or receiving a different compensation for the transportation of property, or for any service in connection therewith, than the applicable rates and charges specified in its tariff schedules filed and in effect with this Commission.

5. Respondent 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.

6. 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 5 of this order, or any part of such undercharges, remain uncollected one hundred twenty days after the effective date of this order, respondent shall institute legal proceedings to effect collection and shall file with the Commission, on the first Monday of each month thereafter, 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.

The Secretary of the Commission is directed to cause personal service of this order to be made upon the respondent herein. The effective date of this order shall be twenty days after the completion of service on respondent.

Dated at San Francisco, California, this 14th day of JANUARY, 1969.

Commissioner J. P. VUKASIN, JR.

Present but not participating.

Commissioner THOMAS MORAN

Present but not participating.

William Lyons, Jr. President
Frederic P. Morrison Commissioners