

ORIGINAL

Decision No. 75700

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 ELMER A. PADULA, doing business as EpcO Trucking, and Seaside Lumber Company, Inc., a California corporation.

Case No. 8870

James L. Larson, for Elmer A. Padula; and Robert I. Morse, for Seaside Lumber Company, Inc., respondents.
William J. McNertney, Counsel, and J. B. Hannigan, for the Commission staff.

O P I N I O N

By its order dated December 3, 1968, the Commission instituted an investigation into the operations, rates, charges, and practices of Elmer A. Padula, doing business as EpcO Trucking.

A public hearing was held before Examiner Porter on February 18, 1969 at Willits, and the matter was submitted.

Respondent presently conducts operations pursuant to a radial highway common carrier permit. Respondent has a terminal at Willits. As of August 1, 1968 he owned 10 tractor power units, 10 full trailers, and employed 10 drivers, one dispatcher and one office manager. His total operating revenue for 1967 was \$130,490.53, and for the first two quarters of 1968 totaled \$34,175.23.

It was stipulated that respondent had been served with Minimum Rate Tariff No. 2, Distance Table No. 6, and applicable supplements thereto.

Respondent Elmer A. Padula, with his attorney, stipulated to the facts of this case (Exhibit No. 3) and agreed that undercharges in the amount of \$3,204.82 had occurred.

The undercharges were the result of applying southbound rates to northbound shipments of lumber.

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. 6, together with all supplements and additions thereto.
3. Respondent charged less than the lawfully prescribed minimum rates in the instances set forth in Exhibit No. 2, resulting in undercharges in the amount of \$3,204.82.

The Commission concludes that respondent violated Sections 3664, 3667 and 3737 of the Public Utilities Code and should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$3,204.82 (the amount of the undercharges shown in Exhibit No. 2). Respondent should not pay an additional fine pursuant to Section 3774 of the Public Utilities Code.

The Commission expects that respondent Elmer A. Padula 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 either respondent or his 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 Elmer A. Padula shall pay a fine of \$3,204.82 to this Commission on or before the fortieth day after the effective date of this order.

2. Respondent Elmer A. Padula shall take such action, including legal action, as may be necessary to collect the amounts of undercharges set forth herein (Exhibit No. 2) and shall notify the Commission in writing upon the consummation of such collections.

3. Respondent Elmer A. Padula 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, 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 Elmer A. Padula 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 Los Angeles, California, this 27th day of MAY, 1969:

William Sproule Jr.
President

J. P. Peterson Jr.
Commissioners

Commissioner A. W. Gatov, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Fred P. Morrissey, being necessarily absent, did not participate in the disposition of this proceeding.