

ORIGINAL

Decision No. 76029

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
STANLEY V. HODGES dba Hodges Trans-
portation Service and Leo F. Piazza
Paving Company.)

Case No. 8834
(Filed August 13, 1968)

Martin J. Rosen, Attorney, for respondents.
William D. Figg-Hoblyn, Counsel, and J. B.
Hannigan, for the Commission staff.

O P I N I O N

This is an investigation on the Commission's own motion into the rates, operations and practices of Stanley V. Hodges, doing business as Hodges Transportation Service (Hodges), for the purpose of determining whether Hodges violated Sections 3664 and 3737 of the Public Utilities Code by charging and collecting less than the minimum rates and charges provided in Minimum Rate Tariff No. 6-A for transportation performed for Leo F. Piazza Paving Company, a corporation (Piazza).

Public hearing was held before Examiner Mooney in San Francisco on December 17, 1968, on which date the matter was submitted.

Hodges operates pursuant to Petroleum Contract Carrier Permit No. 45-5681 which authorizes operations within a 50-mile radius of San Jose. He has no employees or terminal. His office is at his home in San Jose. He has one tractor and leases a trailer from Piazza. His gross operating revenue for the year ending September 30, 1968 was \$35,583. Copies of appropriate minimum rate tariffs and distance tables were served on Hodges.

Testimony and exhibits were presented on behalf of the staff by a representative and a rate expert of the Commission's Transportation Division. A mechanic and the general manager of Piazza's plant and a traffic consultant presented testimony and exhibits on behalf of respondents.

The evidence establishes that during the period January 1, 1967 through April 30, 1968, Hodges transported 529 loads of asphalt and road oils from Union Oil Co., Oleum, and eight loads of said commodities from Douglas Oil Co., Pittsburg, for Piazza to the shipper's plant at 985 Blossom Hill Road (formerly known as Downer Avenue), San Jose; that said transportation is subject to the provisions of Minimum Rate Tariff No. 6-A (MRT 6-A); and that Hodges assessed rail rates under the alternative application provisions of MRT 6-A for all of said transportation.

The staff alleged that Piazza's plant is not a railhead location; that the distance rates in MRT 6-A produced the lowest lawful charges for the transportation under investigation; and that undercharges in the total amount of \$11,302.86 exist in connection with said transportation. The staff agreed that the undercharge would be substantially reduced if Piazza's plant were a railhead location.

Respondents contend that Piazza's plant is in fact a railhead location; that Hodges assessed the correct alternative rail rate for all transportation from Union Oil Co. prior to January 25, 1968; that said rate was increased by one cent per 100 pounds on January 25, 1968; and that Hodges failed to take this increase into account on transportation from Union Oil Co. subsequent to said date. Respondents concurred with the staff rating of the eight shipments from Douglas Oil Co. They asserted that the correct amount of undercharge for the transportation in issue is \$420.95.

The only issue for our determination is whether Piazza's plant is a railhead location. If it is not, the \$11,302.86 in undercharges alleged by the staff would be correct. If it is, the \$420.95 in undercharge contended by respondents would be correct.

According to the evidence, Piazza's plant includes an office, shop, scale house, asphalt storage tanks for 60,000 gallons, an area for rock storage and other buildings and facilities. It is bounded on the south by Blossom Hill Road. A 5-foot chain link fence runs along the entire eastern boundary. There are no gates in the fence. A lead track of the Southern Pacific Company (S.P.) runs parallel to the eastern boundary of the plant, and the center line of the track is 50 feet from the chain link fence. The lead track connects S.P.'s main line which is approximately four miles beyond in a northerly direction and the Alamosa team track which is approximately one-half mile beyond in a southerly direction. No spur track enters Piazza's property. The area between the fence and the track is owned by S.P. It is unimproved but is used by trucks as a roadway. In 1963, Piazza constructed a 4-inch pipeline which extends 250 feet from the pump house for the storage tanks to the eastern boundary of the property. The pipeline is wrapped in asphalt paper to prevent rusting and is buried approximately three feet under the ground except for the last 10 feet which are exposed at the bottom of a shallow ditch which ends just inside of and is lower than the fence. Piazza has a 60-foot flexible hose which can be connected to the end of the pipeline, run under the chain link fence and across the truck roadway and connected to a rail tank car spotted on said track opposite the pipeline. The pipeline was tested when it was installed and is in working condition. It has never been used to receive shipments from rail tank cars. S.P. did

spot, at Piazza's request, an empty tank car on the lead track opposite the pipeline on December 10, 1968, and Piazza's employees connected the flexible hose between the pipeline and the tank car as evidenced by the photographs in Exhibits 5 and 8. Piazza's witnesses stated that this was done to demonstrate that the pipeline could be used for the receipt of rail shipments. They admitted, however, that the reason Piazza installed the pipeline was to make it possible for the plant to be considered a railhead location and thereby entitle Piazza to the benefit of alternative railhead to railhead rates; that Piazza prefers truck shipments; and that in the event the Commission were to find the plant is not a railhead location, it is likely Piazza would perform proprietary truck transportation.

It is noted that the rail tank car shown in the photograph in Exhibit 5 has the following wording stenciled adjacent to the outlet at the bottom of the car to which the 60-foot hose is attached: "STEAM JACKETED OUTLET". The picture also shows three additional smaller pipes extending below the bottom of the car in the vicinity of said outlet. All three have the caps removed. One has the words "STEAM OUTLET" stenciled adjacent to it. While the labels for the other two pipes are not visible in the photograph, it is apparent that either or both are for injecting steam into the coils of the tank car to heat the commodity transported so it will become sufficiently liquefied and flowable for unloading. According to the evidence, Piazza requested the local assistant yard superintendent of the rail line to spot the tank car in the photograph. It is presumed that Piazza requested the type of tank car required to transport the commodities it receives. Since the car furnished has steam facilities, it is reasonable to assume that the asphalt and

road oils received are susceptible to setting up in transit and becoming sufficiently thick or hardened so as to require heat to make them flowable for unloading. Furthermore, a review of the photos of the hot plant in Exhibit 7 and the oil house in which the pumps and asphalt storage tanks are located in Exhibit 9 shows that insulated pipes are used throughout the plant and that steam is an essential part thereof. There is no showing on this record that Piazza has the necessary facilities to furnish steam to rail tank cars on S. P.'s lead track. Based on the evidence before us, we are of the opinion that Piazza could not in fact receive rail shipments of the commodities in question. Having so concluded, we need not consider the question of whether the 60-foot hose extending from Piazza's property would constitute its plant a railhead location for the receipt of said commodities.

We agree with the staff that the correct amount of the undercharges herein is \$11,302.86; that Hodges should be directed to collect said undercharges from Piazza; and that a fine in the amount of \$8,477.14 should be imposed on Hodges. Staff counsel pointed out that Hodges remitted to Piazza 25 percent of the amount he received for hauling as a rental charge for the leased trailer and that the recommended fine takes this into account.

Upon consideration of the evidence, the Commission finds that:

1. Hodges operates pursuant to Petroleum Contract Carrier Permit No. 45-5681 which authorizes operations within a 50-mile radius of San Jose.
2. Hodges was served with appropriate minimum rate tariffs and distance tables.

3. Piazza's property at 985 Blossom Hill Road (formerly known as Downer Avenue), San Jose, has not been shown on this record to be a railhead location.

4. For the transportation covered by the documents in Exhibits 1, 2 and 3, Hodges charged Piazza less than the lawfully prescribed minimum rates, resulting in undercharges in the total amount of \$11,302.86.

The Commission concludes that Hodges violated Sections 3664 and 3737 of the Public Utilities Code and should pay a fine pursuant to Section 3800 of said code in the amount of \$8,477.14.

The Commission expects that Hodges 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 Hodges and the results thereof. If there is reason to believe that Hodges or his attorney have not been diligent, or 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. Stanley V. Hodges, doing business as Hodges Transportation Service, shall pay a fine of \$8,477.14 to this Commission on or before the fortieth day after the effective date of this order.

2. Said Hodges 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.

3. Said Hodges 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, said Hodges 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. Said Hodges 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 12th day of AUGUST, 1969.

William S. ...
President

... P. ...

... P. ...
Commissioners

I will file a dissent August

COMMISSIONER A. W. GATOV, Dissenting:

I dissent.

The record in this case is incomplete. I view it that in addition to the discharge hose which Respondent has installed, he has the capability of paralleling such hose with a steam line from one of his existing steam lines. The decision states that the availability of steam is an essential part of Respondent's plant.

It is clear to me that with an extension of the existing steam line Respondent could have unloaded the commodity in question on a rail tank car and pumped it to his storage tanks. The weakness of the decision is that it rests on a conclusion of inability to unload a rail car. The extension of this rational could make ineligible for rail alternative rates literally hundreds of other commodities at innumerable "rail head" locations.

The question here is whether or not the railroad would spot cars for unloading on the lead track opposite Respondent's plant, and whether or not permission is obtainable for running the hose and steam line over or in property not under control of the Respondent.

I would set aside submission and reopen the proceeding for evidence on the points I have raised.

Dated at San Francisco, California,
August 12, 1969.



Commissioner