

Decision No. 76282

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the rates, opera-
tions and practices of WINFRED P.
HARRIS.

Case No. 8772
(Filed February 27, 1968)

Winfred P. Harris and Roberta Harris, for
respondent.
Robert T. Bothwell, for The Key Corporation,
and Steve C. Franko, for Lorenz Lumber
Company, interested parties.
Elmer Sjostrom, Counsel, and E. H. Hjelt,
for the Commission staff.

O P I N I O N

This proceeding is an investigation on the Commission's own motion into the rates, operations and practices of Winfred P. Harris, an individual, hereinafter referred to as respondent.

Public hearing was held before Examiner Mooney in Red Bluff on April 4, 1968, on which date the matter was submitted.

Respondent operates pursuant to Radial Highway Common Carrier Permit No. 52-523. He has a terminal in Red Bluff. At the time of the staff investigation referred to hereinafter, he operated four trucks and trailers and employed two drivers. The office work is performed by his wife. Respondent's gross operating revenue for the year 1967 was \$168,941. Copies of appropriate tariffs and distance tables, together with all supplements and additions to each, were served on respondent.

On October 31 and November 1 and 2, 1967, a representative of the Commission's Compliance Section visited respondent's place of business and checked his records for the period April 1 through October 1, 1967. The representative testified that respondent

issued 400 freight bills during the review period. He stated that he made true and correct photostatic copies of 47 freight bills and supporting documents covering the transportation of lumber, plywood and liquid glue for ten separate shippers and that the copies are all included in Exhibits 1 and 2. The witness stated that he personally determined whether certain of the origins and destinations of the transportation in question were or were not railhead locations and that the results of his observation are set forth in Exhibit 13.

A rate expert for the Commission staff testified that he took the sets of documents in Exhibits 1 and 2, together with the supplemental information included in Exhibit 13, and formulated Exhibits 3 through 12, which show the rate and charge assessed by respondent, the minimum rate and charge computed by the staff and the amount of undercharge alleged by the staff for the transportation covered by the documents in Exhibits 1 and 2.

He stated that the undercharges resulted from assessing incorrect distance and rail alternative rates, failure to assess applicable off-rail charges and failure to obtain required instructions from the shipper for split shipments. The rate expert pointed out that the total amount of undercharge shown in each of the rate exhibits and the total for the ten exhibits were as follows:

<u>Exhibit No.</u>	<u>Debtor</u>	<u>Amount of Undercharge</u>
3	The Key Corp.	\$1,568.36
4	Borien Chemical	71.19
5	Calif. Sugar & Western Pine	26.46
6	Diamond National	25.15
7	Gold Rey Plywood	42.10
8	Kelly Lumber Co.	27.61
9	Sharp Lumber Co.	134.94
10	Lorenz Lumber Co.	961.58
11	Sullivan & Mann Lumber Co.	72.90
12	Tarter-Webster-Johnson	375.47
	Total	\$3,305.76

Respondent testified as follows: He does his own rating; any rate errors that did occur were inadvertent and unintentional; his records were reviewed on two prior occasions by Commission representatives; they discovered only minor errors; this is the first time he has been before the Commission in an investigation proceeding; to assure that rate errors do not occur in the future, he has retained a traffic consultant to review his freight bills; he no longer handles split shipments; he has collected some of the undercharges shown in the staff rate exhibits.

The record does not establish with certainty whether undercharges exist in connection with the following parts of the staff rate exhibits: Parts 1, 2, 4, 10 and 12 through 15 of Exhibit 3 (The Key Corp.); the one part in Exhibit 11 (Sullivan & Mann Lumber Co.); and the two parts in Exhibit 12 (Tarter-Webster-Johnson). Said counts will not be considered further. As to all other parts of the staff rate exhibits, we concur with the rate expert's ratings.

The staff recommended that a fine in the amount of the undercharges found herein be imposed on respondent. No punitive fine was recommended. Respondent argued that the facts and circumstances do not warrant the imposition of any fine. Based on a review of the entire record, we agree with the staff recommendation.

The Commission finds that:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 52-523.

2. Respondent was served with appropriate tariffs and distance tables, together with all supplements and additions to each.

3. Parts 1, 2, 4, 10 and 12 through 15 of Exhibit 3 (The Key Corp.); the one part in Exhibit 11 (Sullivan & Mann Lumber Co.); and the two parts in Exhibit 12 (Tarter-Webster-Johnson) are dropped from the investigation.

4. Except for the parts of Exhibit 3 listed in Finding 3, respondent charged less than the lawfully prescribed minimum rates in the instances set forth in Exhibits 3 through 10, resulting in the following undercharges:

<u>Exhibit No.</u>	<u>Debtor</u>	<u>Amount of Undercharge</u>
3	The Key Corp.	\$ 461.83
4	Borien Chemical	71.19
5	Calif. Sugar & Western Pine	26.46
6	Diamond National	25.15
7	Gold Rey Plywood	42.10
8	Kelly Lumber Co.	27.61
9	Sharp Lumber Co.	134.94
10	Lorenz Lumber Co.	<u>961.58</u>
	Total	\$1,750.86

The Commission concludes that respondent violated Sections 3664 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 \$1,750.86.

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 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. Winfred P. Harris shall pay a fine of \$1,750.86 to this Commission on or before the fortieth day after the effective date of this order.

2. Winfred P. Harris 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. Winfred P. Harris 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, Winfred P. Harris 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. Winfred P. Harris 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 Los Angeles, California, this 21st day of OCTOBER, 1969.

William J. Synovitz
President
Augustine
Robert J. [illegible]
Robert J. [illegible]
James L. [illegible]
Commissioners