

ORIGINAL

Decision No. 77430

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 WINANS BROS.
 TRUCKING CO., a California corpora-
 tion; TARTER, WEBSTER & JOHNSON, INC.,
 a California corporation; E. L. REITZ
 CO., a California corporation; DEE
 LUMBER CO., INC., a California cor-
 poration; WISCONSIN-CALIFORNIA FOREST
 PRODUCTS, a Wisconsin corporation
 doing business in California; ETIWANDA
 STEEL PRODUCERS, INC., a California
 corporation; and HOOD CORPORATION, a
 California corporation.

Case No. 9014
 (Filed January 20, 1970)

F. C. Winans, for Winans Bros. Trucking Co.;
Fernando Bellotti, for Dee Lumber Co., Inc.;
 and Robert C. Christie, for Etiwanda Steel
 Producers, Inc.; respondents.
Elmer J. Sjoström, Counsel, and J. B. Hannigan,
 for the Commission staff.

O P I N I O N

By its order dated January 20, 1970, the Commission insti-
 tuted an investigation into the operations, rates, charges and
 practices of Winans Bros. Trucking Co. (Winans); Tarter, Webster &
 Johnson, Inc.; E. L. Reitz Co.; Dee Lumber Co., Inc.; Wisconsin-
 California Forest Products; Etiwanda Steel Producers, Inc. and Hood
 Corporation.

Public hearing was held before Examiner O'Leary on April
 21, 1970 at Redding.

It was stipulated (Exhibit 1) that (1) Winans is engaged in
 the business of transporting property over the public highways of
 this State for compensation holding Radial Highway Common Carrier
 Permit No. 1-2928, Contract Carrier Permit No. 45-819, Petroleum

Contract Carrier Permit No. 45-968 and certificates of public convenience and necessity pursuant to Decision No. 53025 dated May 8, 1956 and Resolution No. 13821 dated June 23, 1964; (2) Winans was served with appropriate tariffs and distance tables; and (3) Winans charged less than its lawfully prescribed rates or the prescribed minimum rates for the period June 1, 1968 through August 31, 1968 for the shippers and in the amounts as follows:

Tarter, Webster & Johnson, Inc.	\$ 120.40
E. L. Reitz Co.	1,763.14
Dee Lumber Co., Inc.	297.24
Wisconsin-California Forest Products	130.47
Hood Corporation	2,081.79
Etiwanda Steel Producers, Inc.	1,026.03

At the time of the investigation Winans employed 48 drivers, 8 maintenance personnel, 3 dispatchers, 5 office personnel and 2 salesmen. Its gross operating revenue for 1969 was \$1,790,145. It operated 54 pieces of power equipment and 93 trailers. It had three terminals located at Redding, Stockton and Los Angeles.

Evidence was presented by the staff showing that in some instances Winans did not collect transportation charges within the credit period set forth in Minimum Rate Tariff No. 2. This evidence was not refuted.

The staff recommended that Winans collect the undercharges, pay a fine in the amount of the undercharges pursuant to Sections 2100 and 3800 of the Public Utilities Code and pay an additional fine of \$1,500 pursuant to Sections 1070 and 3774 of the Public Utilities Code. The representative for Winans stated that the company had a \$52,000 deficit during 1969 and that since the undercharges were mainly the result of documentation failures the \$1,500 fine recommended by the staff was excessive. The Commission takes official notice of the three formal proceedings involving Winans

Bros. Trucking Co. wherein sanctions were imposed upon the carrier for violations of the filed tariff rates and the Commission minimum rate orders. (Decision No. 59216 dated November 3, 1959 in Case No. 6107; Decision No. 67291 dated May 26, 1964 in Case No. 7172 and Decision No. 72953 dated August 22, 1967 in Case No. 8575.)

Based upon the evidence adduced the Commission finds that:

1. Winans Bros. Trucking Co. operates pursuant to radial highway common carrier, highway contract carrier, petroleum contract carrier permits and certificates of public convenience and necessity.
2. Winans Bros. Trucking Co. was served with appropriate tariffs and distance tables.
3. Winans Bros. Trucking Co. charged less than its lawfully prescribed rates and the prescribed minimum rates in the amounts set forth in Exhibit 1 which resulted in undercharges in the amount of \$5,419.07.
4. Winans Bros. Trucking Co. failed to collect transportation charges within the time prescribed by Minimum Rate Tariff No. 2.

The Commission concludes that Winans Bros. Trucking Co. violated Sections 494, 3664, 3667 and 3737 of the Public Utilities Code and should pay a fine pursuant to Sections 2100 and 3800 of the Public Utilities Code in the amount of \$5,419.07 and in addition thereto should pay a fine pursuant to Sections 1070 and 3774 of the Public Utilities Code in the amount of \$1,000.00

The Commission expects that Winans Bros. Trucking Co. 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 Winans Bros. Trucking Co. and the results thereof. If there is reason to believe that Winans Bros. Trucking Co. 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. Winans Bros. Trucking Co. shall pay a fine of \$6,419.07 to this Commission on or before the fortieth day after the effective date of this order.

2. Winans Bros. Trucking Co. 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. Winans Bros. Trucking Co. 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. Winans Bros. Trucking Co. shall cease and desist from charging and collecting compensation for the transportation of property or for any service in connection therewith in a different

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amount than its published rates and charges on 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 service upon Winans Bros. Trucking Co.

Dated at San Francisco, California, this 30th day of JUNE, 1970.

William Sproule
President
Augusta
J. H. [unclear]
Sam [unclear]
Vernon L. Stinson
Commissioners