

Decision No. 78089

ORIGINAL

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)
 ALLEN KINCADE, TAYLOR-WATTRON,)
et al., and PEAVEY COMPANY.)

Case No. 9085
 (Filed June 30, 1970)

Allen Kincade, in propria persona,
and David G. Harries III, for
Taylor-Wattron Company, respondents.
R. G. Thayer, Counsel, and E. E. Cahoon,
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 Allen Kincade (Kincade) for the purpose of determining whether said respondent violated Sections 3664, 3667 and 3737 of the Public Utilities Code by charging and collecting less than applicable minimum rates and failing to comply with applicable documentation requirements in connection with for-hire transportation performed for H. L. Taylor, R. M. Wattron, R. C. Dunn and D. G. Harries, a partnership doing business as Taylor-Wattron Company (Taylor-Wattron), and for Peavey Company, a Minnesota corporation (Peavey).

Public hearing was held before Examiner Mooney in Yuba City on September 22, 1970. The matter was submitted on said date.

Kincade operates pursuant to a radial highway common carrier permit. At the time of the staff investigation referred to hereinafter, Kincade had a terminal in Yuba City; operated 11

tractors, 43 trailers and 3 converter gears; and employed 11 drivers, 3 mechanic and service personnel and 1 part-time bookkeeper. He had a gross operating revenue of \$285,491 for the year ending June 30, 1970, and was served with appropriate minimum rate tariffs and distance tables, together with all supplements and additions to each.

On various days during February and March 1970, a representative of the Commission staff visited Kincade's place of business and examined his records covering the transportation of bulk almond hull meal and milo for the period May through December 1969. The representative testified that Kincade transported approximately 600 shipments during the review period and that approximately 70 percent of said transportation was exempt from minimum rate regulation. He stated that he made true and correct photostatic copies of 21 billing invoices issued to Taylor-Wattron and 1 billing invoice issued to Peavey together with various supporting freight bills and other documents and that all of the photocopies are included in Exhibit 1. The witness testified that some of the documents in Exhibit 1 did not include all of the information necessary to rate the transportation covered by them; that the missing information was obtained from Kincade or the respondent shippers; and that Kincade had not obtained the required written instructions from Taylor-Wattron or Peavey for many of the individual shipments in Exhibit 1 which he had rated as consolidated shipments. The representative stated that he had personally observed that neither the Clay Station Cattle Company at Clay nor the Schonauer Company Ranch at Artois, the origin and destination of certain of the transportation included in Exhibit 1, are served by rail facilities.

A rate expert for the Commission staff testified that he took the sets of documents in Exhibit 1, together with the information testified to by the representative, and formulated the rate statements in Exhibits 2 and 3 relating to transportation performed for Taylor-Wattron and Peavey, respectively. Each of the rate exhibits shows the rate and charge assessed by Kincade, the rate and charge computed by the staff and the amount of the undercharge alleged by the staff for the transportation covered by the various billing invoices in Exhibit 1. The witness stated that the rate errors in Exhibits 1 and 2 resulted from assessing incorrect rates, failure to obtain written instructions from the shipper for multiple lot and split pickup shipments as required by the applicable rules in Minimum Rate Tariff No. 14-A and failure to pick up all component parts of multiple lot shipments within the two-calendar-day period specified in said tariff. The alleged undercharges shown in Exhibits 2 (Taylor-Wattron) and 3 (Peavey) amount to \$2,555.17 and \$198.72, respectively, and the total in both exhibits is \$2,753.89.

A general partner of Taylor-Wattron testified as follows: There was never any attempt by his company to violate any rates or regulations; any violations that did occur were inadvertent errors; he reviewed the staff ratings in Exhibit 2 with his company's traffic consultant and is of the opinion that the total of the undercharges shown therein should be substantially reduced; the \$663.49 in undercharges with which he does agree were occasioned by delays in pickup beyond the required two-day period due to breakdowns of the carrier's equipment; he is now thoroughly examining every multiple lot shipping document to make certain that errors do

not occur in the future; the amount of the undercharges alleged by the staff is several times greater than the profit realized by his company on the commodities transported.

The staff rate expert in rebuttal asserted that with the exception of minor adjustments in Parts 7 and 8 of Exhibit 2, he did not agree with the ratings advocated by the witness for Taylor-Wattron. He pointed out that said witness had, in a number of instances, used one master document as the basis for several separate multiple lot shipments. He explained that this is not correct; that a master document can cover only one multiple lot shipment; and that in the absence of additional master documentation all components picked up beyond the two-calendar-day period must be rated as separate shipments. With respect to Parts 7 and 8, he stated that the last component shown in Part 7 could be combined with the first two components shown in Part 8 as suggested by the company's witness. By so doing, the undercharge shown in Part 7 is reduced from \$177.46 to \$117.47, a reduction of \$59.99, and the undercharge shown in Part 8 would remain unchanged.

Kincade testified that he has always attempted to operate legally; that although he is generally familiar with Commission tariffs, practically all of his time is required in the operating end of the business; that he was not aware any rate errors had occurred; that steps are being taken to avoid such errors in the future; that the volume of business handled by his company is declining; and that this is adversely affecting his financial position.

Kincade has heretofore been issued three undercharge letters by the staff and has been placed on official notice by the staff regarding documentation requirements.

The Commission finds that:

1. Kincade operates pursuant to a radial highway common carrier permit.
2. Kincade was served with all applicable minimum rate tariffs and distance tables, together with all supplements and additions to each.
3. With the exception of Parts 7 and 8 of Exhibit 2 (Taylor-Wattron), the minimum rates and charges computed by the staff in said exhibit and in Exhibit 3 (Peavey) are correct.
4. The last component shown in Part 7 of Exhibit 2 (Taylor-Wattron) should be combined with the first two components shown in Part 8. By so doing, the amount of the undercharge in Part 7 is reduced \$59.99 to \$117.47, and the amount of the undercharge shown in Part 8 remains unchanged at \$59.51.
5. The written shipping instructions and the single multiple lot document required by Items 140 and 141 of Minimum Rate Tariff No. 14-A for a multiple lot shipment cover only one such shipment. The same set of documents cannot be used as a basis for consolidating into additional multiple lot shipments any individual shipments picked up after the two-calendar-day period specified in said items has expired.
6. Except to the extent Parts 7 and 8 of Exhibit 2 are amended by Finding 4, Kincade charged less than the lawfully prescribed minimum rates in the instances set forth in Exhibits 2

(Taylor-Wattron) and 3 (Peavey) resulting in undercharges in the amounts of \$2,495.18 and \$198.72, respectively. The total amount of the undercharges in the two exhibits is \$2,693.90.

The Commission concludes that Kincade violated Sections 3664, 3667 and 3737 of the Public Utilities Code and should pay a fine pursuant to Section 3800 of said code in the amount of \$2,693.90 and in addition thereto should pay a fine pursuant to Section 3774 thereof in the amount of \$250.

The Commission expects that Kincade 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 said respondent and the results thereof. If there is reason to believe that either said 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. Allen Kincade shall pay a fine of \$2,943.90 to this Commission on or before the fortieth day after the effective date of this order.

2. Said 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.

3. Said 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 2 of this order, or any part of such undercharges, remain uncollected sixty days after the effective date of this order, said 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. Said respondent shall cease and desist from violating applicable tariff rules and 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 Allen Kincade. The effective date of this order, as to this respondent, shall be twenty days after completion of personal service. The Secretary is further directed to cause service by mail of this order to be

made upon all other respondents. The effective date of this order, as to these respondents, shall be twenty days after completion of service by mail.

Dated at San Francisco, California, this 15th day of DECEMBER, 1970.

J. W. Harkin
Chairman

Augustan

William J. Harkin

Thomas J. Harkin

Vernon L. Sturgeon
Commissioners