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ORIGINAL

Decision No. 79802

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own
motion into the operations, rates and
practices of Yreka Western Railroad
Company, a California corporation, and
Sierra Pacific Industries, a
California corporation.

Case No. 9287
(Filed November 2, 1971)

Martin J. Rosen, Attorney at Law, for Yreka Western
Railroad Company, respondent.
Timothy E. Treacy, Attorney at Law, 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 Yreka Western Railroad Company, a California corporation (Yreka Western), 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 in connection with for-hire transportation performed for Sierra Pacific Industries, a California corporation (Sierra).

Public hearing was held before Examiner Mooney in San Francisco on December 8, 1971, on which date the matter was submitted.

Yreka Western holds radial highway common carrier, highway contract carrier and dump truck carrier permits and a certificate of public convenience and necessity. It has terminals in Yreka and Eureka. During the staff investigation referred to hereinafter, it employed in its truck operations six drivers, one mechanic, one office girl and a manager; it operated three tractors, five bobtail vans, three semi-flatbed trailers and three full flatbed trailers; and it

had been served with all applicable minimum rate tariffs and distance tables, together with all supplements and additions to each. Its gross operating revenue for the year 1970 was \$549,975 and for the first quarter of 1971 was \$75,544.18.

During July 1971, a representative of the Commission staff visited Yreka Western's place of business and reviewed its records relating to its permitted operations for the period July through December 1970. The investigation disclosed 48 instances in which said respondent had assessed less than applicable rates and charges for the transportation of lumber for Sierra. Said transportation is summarized in the staff's Exhibit 2. According to said exhibit the undercharges resulted from the use of incorrect minimum weights, the improper application of combination rail truck rates and assessing incorrect alternative rail rates. The total of the undercharges alleged by the staff in Exhibit 2 is \$2,860.81.

The staff representative testified that he was informed by the manager of Yreka Western that a new office girl was hired in June 1970 after the former rate man had retired; that in 34 of the instances included in Exhibit 2, the new girl thought the transportation was interstate and applied a lower interstate rate instead of the applicable intrastate rates in error; and that when the error was discovered in November 1970, she was instructed to use the correct intrastate rates for such transportation. The witness pointed out, however, that no rebilling was issued by said respondent for the 34 incorrectly rated shipments. He stated that two undercharge letters had been sent to Yreka Western and that it was placed on notice by the staff on two occasions for rate and tariff violations.

No evidence was presented on behalf of either respondent.

Counsel for the Commission staff recommended that Yreka Western be directed to collect the undercharges shown in Exhibit 2; that a fine in the amount of said undercharges and an additional punitive fine of \$1,000 be imposed on said respondent; and that it be ordered to cease and desist from further rate violations.

The attorney for Yreka Western argued that neither a cease and desist order nor a punitive fine are justified. He asserted that his client operates only seven miles of railroad track; that it does not have an expert staff and is unable to obtain competent rate employees; that the errors were inadvertant and unintentional; that his client was cooperative with the staff; and that its net profit for 1970 was approximately \$5,000.

We concur with the ratings and undercharges shown in Exhibit 2. With the exception of the amount of punitive fine suggested by the staff, we likewise agree with the staff recommendation. As to the amount of the punitive fine, we are of the opinion, based on a review of the record, that it should be \$500.

The Commission finds that:

1. Yreka Western operates pursuant to radial highway common carrier, highway contract carrier and dump truck carrier permits and a certificate of public convenience and necessity.
2. Said respondent was served with all applicable minimum rate tariffs and distance tables, together with all supplements and additions to each.
3. The rates and charges computed by the staff in Exhibit 2 are correct.
4. Yreka Western charged less than the lawfully prescribed minimum rates in the instances set forth in Exhibit 2 resulting in undercharges in the total amount of \$2,860.81.

The Commission concludes that:

1. Yreka Western violated Sections 3664, 3667 and 3737 of the Public Utilities Code.
2. Said respondent should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$2,860.81, and in addition thereto, said respondent should pay a fine pursuant to Section 3774 of said Code in the amount of \$500.

3. Said respondent should be directed to cease and desist from charging less than applicable minimum rates and charges.

The Commission expects that Yreka Western 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 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. Yreka Western Railroad Company, a California corporation, shall pay a fine of \$3,360.81 to this Commission on or before the fortieth day after the effective date of this order.

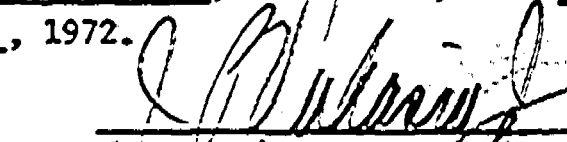
2. Said respondent shall take such action, including legal action, as may be necessary to collect the amounts of undercharges set forth herein, and shall notify the Commission in writing upon the consummation of such collections.

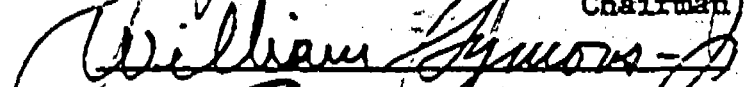
3. Said respondent shall proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges, and in the event undercharges ordered to be collected by paragraph 2 of this order, or any part of such undercharges, remain uncollected sixty days after the effective 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.

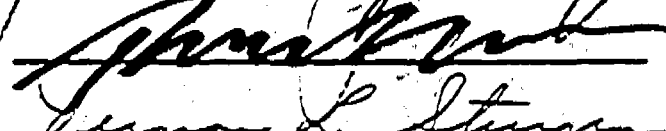
4. Said respondent shall cease and desist from charging and collecting compensation for the transportation of property or for any service in connection therewith in a lesser amount than the minimum rates and charges prescribed by this Commission.


The Secretary of the Commission is directed to cause personal service of this order to be made upon Yreka Western Railroad Company. 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 Sierra Pacific Industries, a California corporation. The effective date of this order, as to the latter respondent, shall be twenty days after completion of service by mail.

Dated at San Francisco, California, this 14th
day of MARCH, 1972.



Chairman






Commissioners