

Decision No. 81853

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates and practices of Shropshire Trucking, Inc., a California corporation; Seville Olive Company, a California corporation and Chevron Chemical Company, a Delaware corporation.

Case No. 9542  
(Filed April 17, 1973)

D. E. Bessey, for Shropshire Trucking, Inc.,  
respondent.  
Elmer Sjostrom, 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 operations, rates, charges, and practices of Shropshire Trucking, Inc. (Shropshire), for the purpose of determining whether it charged less than minimum rates in connection with transportation performed for Seville Olive Company, a corporation (Seville), and Chevron Chemical Company, a Delaware corporation (Chevron).

Public hearing was held before Examiner Mooney in Fresno on July 17, 1973 on which date the matter was submitted.

Findings

The following undisputed facts are established by the record, and we find them to be such:

1. Shropshire operates pursuant to a radial highway common carrier permit.

2. In July and September 1972, the Commission staff conducted an investigation of Shropshire's operations and reviewed its records for the period January 1, 1972 through June 30, 1972. The investigation disclosed various rate errors in connection with the

transportation of tree or weed killing compound, spreader adhesives, ground clay, and talc for Chevron and the transportation of canned olives, glass bottles, plastic jars, paper labels, bottle caps, salt, vinegar, and wooden half barrels for Seville.

3. At the time of the staff investigation, Shropshire had a terminal in Lindsay, operated 22 tractors and 60 trailers, had 23 employees, and had all applicable tariffs and distance tables. Its gross operating revenue for the year ending March 31, 1973 was \$454,690. Ninety or more percent of the transportation performed by Shropshire is agricultural commodities which are exempt from rate regulation, and the balance is agricultural related products. The number of employees hired by Shropshire varies during the year because of the seasonal nature of agricultural hauling.

4. The rate errors referred to in Finding 1 in connection with the transportation for Chevron and Seville are summarized in the staff's Exhibits 2 and 3, respectively. The rate errors resulted from the assessment of flat charges, combining separate shipments as split shipments without the required documentation, and incorrect application of rates.

5. The minimum rates and charges and resulting undercharges computed by the staff in Exhibits 2 and 3 are correct.

6. Shropshire charged less than the lawfully prescribed minimum rates in the instances set forth in Exhibits 2 (Chevron) and 3 (Seville) in the amounts of \$3,688.29 and \$555.40, respectively. The total of the undercharges in both exhibits is \$4,243.69.

7. Shropshire has billed and collected the undercharges shown in Exhibit 2 from Chevron.

8. Shropshire has billed Seville for the undercharges shown in Exhibit 3, and Seville has informed it by telephone that the undercharges will be paid.

9. An undercharge letter dated January 26, 1970 was sent to Shropshire by the staff.

Discussion

The only matter requiring discussion is the penalty, if any, that should be imposed on Shropshire. The staff recommends that it be fined in the amount of the undercharges found herein plus a punitive fine of \$500. Shropshire urged that no penalties whatsoever be imposed on it.

In support of its position, the vice president of Shropshire testified as follows: During the period covered by the staff investigation, Shropshire had a new dispatcher whose duties included preparing freight bills; most of the hauling performed by Shropshire is very competitive rate exempt transportation; the rate errors were due to the dispatcher's inexperience in billing ratable commodities; in many instances he relied on the shipper for the rate; since the staff investigation, all bills have been reviewed and any errors that have been discovered have been rebilled; steps have been taken to assure that rate errors do not occur in the future; there was never any intent to violate rates; a fine is not warranted.

We agree with the staff recommendation. The purpose of the fine in the amount of the undercharges is to prevent any windfall to the carrier for its own rate errors. The fact that it may have relied on shippers for rates or that its personnel are inexperienced in rate matters does not relieve it from its responsibility to observe and abide by the minimum rate tariffs. As to the punitive fine, it is substantially below the maximum that could be imposed.

Conclusions

1. Shropshire violated Sections 3664, 3667, and 3737 of the Public Utilities Code.

2. Shropshire should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$4,243.69 and, in addition thereto, should pay a fine pursuant to Section 3774 in the amount of \$500.

3. Shropshire should be directed to cease and desist from violating the rates and rules of the Commission.

The Commission expects that Shropshire 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 such measures. If there is reason to believe that Shropshire 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 determining whether further sanctions should be imposed.

O R D E R

IT IS ORDERED that:

1. Shropshire Trucking, Inc, (Shropshire) shall pay a fine of \$500 to this Commission pursuant to Public Utilities Code Section 3774 on or before the fortieth day after the effective date of this order. Shropshire shall pay interest at the rate of seven percent per annum on the fine; such interest is to commence upon the day the payment of the fine is delinquent.

2. Shropshire shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$4,243.69 on or before the fortieth day after the effective date of this order.

3. Shropshire shall take such action, including legal action, as may be necessary to collect the undercharges set forth in Finding 6, and shall notify the Commission in writing upon collection.

4. Shropshire shall proceed promptly, diligently, and in good faith to pursue all reasonable measures to collect the undercharges. In the event the undercharges ordered to be collected by paragraph 3 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 the 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.

5. Shropshire 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 Shropshire and to cause service by mail of this order to be made upon all other respondents. The effective date of this order as to each respondent shall be twenty days after completion of service on that respondent.

Dated at San Francisco, California, this 12<sup>th</sup>  
day of SEPTEMBER, 1973.

William J. Quinn President  
[Signature]  
[Signature]  
[Signature] Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.