

ORIGINAL

Decision No. 82085

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates and practices of EVAN E. OAKLEY, an individual, HUMBLE OIL & REFINING CORP., a Delaware corporation, ATLANTIC RICHFIELD COMPANY, a Pennsylvania corporation, REDWOOD COAST LUMBER CO., INC., a California corporation, and JESS RAWLES, an individual.

Case No. 9557  
(Filed May 15, 1973)

Evan E. Oakley, for himself, respondent.  
Walter H. Kessenick, Attorney at Law, and  
Edward Hjelt, for the Commission staff.

### O P I N I O N

This investigation was instituted to determine whether respondent Evan E. Oakley (Oakley) charged \$4,001.37 less than the applicable minimum rates while hauling petroleum products for Humble Oil & Refining Corp., Atlantic Richfield Company, and Jess Rawles, also whether Oakley charged \$730.55 less than the applicable minimum rates in connection with hauling lumber for Redwood Coast Lumber Co., Inc.

Public hearing was held before Examiner Fraser on July 12, 1973 in Ukiah. Oakley operates under the authority of a highway contract carrier permit and a petroleum contract carrier permit. He operates out of a single terminal in Ukiah. His employees consist of six drivers. There are no office or administrative personnel. Operating equipment includes seven tractors, one van semitrailer, one van trailer, one tank semitrailer, one tank trailer, six flat semitrailers, and five flat trailers. Gross operating revenue totaled \$163,082 for 1972 and \$53,365 for the first quarter in 1973. The carrier has received copies of Minimum Rate Tariffs 1-B, 2, 6-A and 14 with appropriate amendments and supplements thereto; also Distance Table 7 and Exception Ratings Tariff 1.

It was stipulated that the staff rates are correct and that all staff exhibits could be received in evidence. The record shows the following undercharges on the hauling of petroleum products:

|                             | Amt. of U/C's<br>Due to Failure<br>To Assess<br>Minimum<br>Rates | Amt. of U/C's<br>Due to Failure<br>To Observe<br>Minimum<br>Weights | Total             |
|-----------------------------|------------------------------------------------------------------|---------------------------------------------------------------------|-------------------|
| Atlantic Richfield          |                                                                  | \$ 698.18                                                           | \$ 698.18         |
| Jess Rawles                 | \$ 8.91                                                          | \$ 229.08                                                           | \$ 237.99         |
| Humble Oil & Refining Corp. | <u>\$1,842.98</u>                                                | <u>\$1,222.22</u>                                                   | <u>\$3,065.20</u> |
| Total                       | \$1,851.89                                                       | \$2,149.48                                                          | \$4,001.37        |

Undercharges on the hauling of lumber (for Redwood Coast Lumber Co., Inc.) are \$730.55. The combined undercharges total \$4,731.92.

The record concerns transportation performed by Oakley during the first quarter of 1972. A Commission representative served an informal citation on November 2, 1972. It alleged that undercharges of \$453.19 had resulted from assessing and charging less than the minimum rates on certain transportation performed during the period from December 8, 1971 through March 31, 1972 and advised Oakley that he could either pay a fine of \$453.19 to the Commission under Section 3800 of the Public Utilities Code and collect the undercharges represented by the fine which would terminate the proceeding; or he could deny the charge which would result in a formal proceeding before the Commission, with a possible broadening of the issues and an additional fine under Section 3774 of the Public Utilities Code. Oakley denied the charge in writing and a formal investigation was instituted as Case No. 9557.

Oakley explained that Item 190 of Minimum Rate Tariff 6-A, as amended on July 1, 1970, requires that the applicable rate per shipment must be based on a minimum weight of 50,000 pounds, when two connected tank vehicles are used. He advised the rule favors new equipment which can transport the rated tonnage. He stated his equipment is obsolete, with less hauling capacity than modern units. He therefore multiplied the actual number of gallons carried on each load by the 6.2 pounds per gallon weight provided in Item 140, Minimum Rate Tariff 6-A. Each load hauled totaled about 48,000 pounds and he used this weight as the basis for the rate charged, since it seemed dishonest to charge shippers for 2,000 pounds over what was delivered, on every shipment. He further advised that prior to the July 1, 1970 amendment to Item 140 of Minimum Rate Tariff 6-A, each gallon transported was to be rated at a weight of 6.6 pounds. All shipments would have been over the 50,000 pound minimum at this weight. He requested a formal hearing to obtain a ruling on whether it is necessary for him to purchase new equipment, or whether he should be allowed to deviate from compliance with Item 190 of Minimum Rate Tariff 6-A. He admitted the undercharges on lumber hauling were due to an error in rating. Staff counsel recommended a \$500 punitive fine and suggested that Oakley institute another proceeding to request relief from the applicable provisions of Minimum Rate Tariff 6-A.

#### Discussion

A punitive fine of \$500 is justified; the use of obsolete equipment is no defense to a clear violation of the tariff. Respondent was advised how to apply for relief from specific minimum rates during the staff investigation and assistance was offered. It was emphasized that no relief could be provided in the investigation proceeding.

#### Findings

1. Oakley operates pursuant to a highway contract carrier permit and a petroleum contract carrier permit.

2. Oakley was served with appropriate tariffs and distance tables.

3. Oakley charged less than the lawfully prescribed minimum rate in the instances set forth in Exhibits 7 (Redwood Coast Lumber Co., Inc.), 8 (Jess Rawles), 9 (Atlantic Richfield Co.) and 10 (Humble Oil and Refining Corp.) resulting in undercharges in the amount of \$4,731.92.

Based upon the foregoing findings of fact, the Commission concludes that Oakley 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 \$4,731.92 and, in addition thereto, should pay a fine pursuant to Section 3774 in the amount of \$500.

The Commission expects that Oakley 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 Oakley 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 determining whether further sanctions should be imposed.

O R D E R

IT IS ORDERED that:

1. Evan E. Oakley (Oakley) 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. Oakley 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. Oakley shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$4,731.92 on or before the fortieth day after the effective date of this order.

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

4. Oakley 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. Oakley 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 Oakley 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 7<sup>th</sup>  
day of NOVEMBER, 1973.

Vernon L. Stinson  
President  
William J. Quinn  
W. D. Wilson  
Robert A. Smith  
Stanley D. Hall  
Commissioners