

**ORIGINAL**

Decision No. 82858

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 Lonnie  
Waggoner and Oregon Pacific Industries,  
Inc., an Oregon Corporation doing  
business in California.

Case No. 9629  
(Filed October 30, 1973)

Lonnie Waggoner, for himself, respondent.  
Robert T. Baer, 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 Lonnie Waggoner (Waggoner) for the purpose of determining whether Waggoner charged less than applicable minimum rates in connection with the transportation of lumber for Oregon Pacific Industries, Inc. (OPI).

Public hearing was held before Examiner Mooney in Fresno on February 20, 1974, 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. Waggoner operates pursuant to a radial highway common carrier permit.
2. During early 1973, a staff representative conducted an investigation of Waggoner's operations. He was informed that all records were maintained by Waggoner's accountant. The representative visited the accountant's office. He asked for and reviewed all freight bills, underlying documents, and other records furnished to him for the first four months of 1972. OPI was Waggoner's only customer during this period. The various records indicated that

Waggoner had not issued freight bills or collected freight charges for ten shipments of lumber and had not issued a freight bill or collected the correct charge for one less-than-truckload shipment of lumber. The investigator visited various lumber mills in the north from which OPI shipped and various public weighmaster stations and obtained information from them that the ten loads for which charges had not been assessed had in fact been transported. Upon confronting Waggoner with this information, he furnished the staff with the missing freight bills, none of which had been sent to OPI.

3. The ten free loads of lumber transported by Waggoner for OPI and the one less-than-truckload lumber shipment for which charges below the minimum level was assessed was an arrangement whereby Waggoner performed transportation for OPI at less than minimum rates.

4. The minimum rates and charges and resulting undercharges computed by the staff in Exhibit 5 for the ten shipments for which no charges were collected and the one for which an incorrect charge was collected are correct.

5. Waggoner charged less than the lawfully prescribed minimum rates in the instances set forth in Exhibit 5 resulting in undercharges in the total amount of \$3,774.87.

6. An undercharge letter dated December 28, 1967 was sent to Waggoner by the staff.

7. At the time of the staff investigation, Waggoner did not maintain a terminal. He operated a truck and trailer, had no employees, and had been served with applicable minimum rate tariffs and distance tables. His gross operating revenue for the year ending September 30, 1973 was \$36,127.

#### Discussion

The only matter requiring discussion is the penalty, if any, that should be imposed on Waggoner.

We are of the opinion that Waggoner should be directed to collect the undercharges found herein from OPI and that a fine in the amount of the undercharges plus a punitive fine of \$500 should

be imposed on him. In arriving at the punitive fine we have taken into account the assertions by Waggoner that he had no intent to undercharge; that the transportation was billed in the manner required by OPI; that he did not completely understand the application of the tariff; that he has not hauled for OPI for over a year; and that he is now exclusively engaged in subhauling for another carrier. However, such mitigation does not exonerate a carrier from its responsibility to comply with minimum rate regulations and tariffs. It is a well settled principle that a carrier has the duty to ascertain the applicable rates to be assessed and to collect the resulting charges for any and all rateable transportation performed and that lack of knowledge on the carrier's part or reliance on the shipper or anyone else for this is not an acceptable excuse.

OPI is placed on notice that if it is to engage in any improper arrangements with permitted carriers for the transportation of its property, it may be in violation of Sections 3669 and 3670 of the Public Utilities Code and could be subject to the penalties specified in Section 3802 and 3804 of the code.

#### Conclusions

1. Waggoner violated Sections 3664, 3667, 3668, and 3737 of the Public Utilities Code.
2. Waggoner should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$3,774.87 and, in addition thereto, should pay a fine pursuant to Section 3774 in the amount of \$500.
3. Waggoner should be directed to cease and desist from violating the rates and rules of the Commission.

The Commission expects that Waggoner 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 Waggoner 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. Lonnie Waggoner (Waggoner) 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. Waggoner 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. Waggoner shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$3,774.87 on or before the fortieth day after the effective date of this order.
3. Waggoner shall take such action, including legal action, as may be necessary to collect the undercharges set forth in Finding 5, and shall notify the Commission in writing upon collection.
4. Waggoner 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. Failure to file any such monthly report within fifteen days after the due date shall result in the automatic suspension of Waggoner's operating authority until the report is filed.

5. Waggoner 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 Waggoner and to cause service by mail of this order to be made upon respondent Oregon Pacific Industries, Inc. 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 15<sup>th</sup>  
day of MAY, 1974.

William J. Sproule President  
L. M. Whelan Secretary  
John A. McKeon  
Donald H. Sturgeon Commissioners

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