

Decision No. 91952 JUN 17 1980

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  
SAMUEL H. STANLEY and ROBERT ROSS,  
doing business as SAD SAM'S  
TRUCKING, a copartnership,  
SAMUEL H. STANLEY, an Individual  
and NEWHALL REFINING COMPANY, INC.,  
a Delaware Corporation, Respondents.

OII No. 46  
(Filed May 8, 1979)

Richard Allen Rosenberg and Samuel H. Stanley, for  
Sad Sam's Trucking and Samuel H. Stanley;  
and James H. Lyons, for Newhall Refining  
Company, Inc.; respondents.  
Randolph L. Wu and Paul Wuerstle, for the Commission  
staff.

### O P I N I O N

This investigation was instituted on the Commission's own motion to determine whether Samuel H. Stanley and Robert Ross, copartners doing business as Sad Sam's Trucking (Sad Sam's) and Samuel H. Stanley (Stanley) (an individual), engaged in the business of transporting property over the public highways of this State for compensation as petroleum contract carriers, violated Sections 3664 and 3737 of the Public Utilities Code by charging less than the applicable minimum rates set forth in Minimum Rate Tariff 6-B (MRT 6-B) in performing transportation for shipper/respondent Newhall Refining Company, Inc. (Newhall).

After duly published notice, public hearings were held in Los Angeles on July 10, 1979 and September 5 and 6, 1979. The matter was submitted on the latter date subject to the filing of concurrent briefs due on or before October 29, 1979, and the filing of a

late-filed exhibit by the staff (No. 16) due September 28, 1979, and the filing of a motion to dismiss by the respondent carrier due ten days prior to the due date for the concurrent briefs. At the request of the respondent carrier, with the concurrence of the parties, the due date for the concurrent briefs was extended to November 30, 1979. The late-filed exhibit, a Motion To Dismiss, and the concurrent briefs have been timely filed. The matter is ready for decision.

The Evidence

The staff presented its case through two witnesses and 14 exhibits. Exhibits 1 and 3 contain information pertaining to Sad Sam's, the partnership, and the sole proprietorship of Samuel H. Stanley. The exhibits show that the partnership (1) was issued a petroleum contract carrier permit on March 22, 1977, (2) was served with the Distance Table and MRT 6-B, (3) had two employees, two trucks, two tank trailers, and (4) had gross operating revenues for the year 1977 of \$45,797.97.

The information pertaining to the sole proprietorship shows that Stanley was issued a radial highway common carrier permit on December 30, 1977 and a petroleum contract carrier permit on June 15, 1978; and that he was served with MRT 2, MRT 6-B, the Exceptions Ratings Tariff, and the Distance Table. Stanley has eight employees, six tractors, three tank trailers, and gross operating revenues for the third quarter of 1978 in the amount of \$55,406.08 and for the fourth quarter, 1978, \$70,891.26.

Exhibit 2 is a copy of an undated<sup>1/</sup> undercharge citation against Sad Sam's and a copy of the denial thereof.

Exhibits 4 through 8 contain the copies of the carrier's freight bills and supporting documents which are the basis for the rate statements setting forth the alleged undercharges in Exhibits 9, 10, 11, and 12 and late-filed Exhibit 16, introduced by a staff rate expert. Sad Sam's performed the involved transportation up to the time of service of the undercharge citation. After service of the citation the transportation continued to be performed with the same type of alleged violation by Stanley.

The transportation covered by these exhibits involves, for the most part, movements between Newhall and Long Beach Harbor of a petroleum product in bulk described as topped crude and charged for on a flat rate per load. The staff described the commodity as residual fuel oil and rated each shipment on a constructive weight basis as provided in Item 30 of MRT 6-B.

The field investigator assumed that the gallonage figure shown on the freight bill was the actual number of gallons loaded into the tank truck. Cross-examination developed that the carrier pointed out to him that the figures represented the gallonage capacity of the tanks rather than the number of gallons actually loaded. The carrier also pointed out that no metering of shipments that originated at the Newhall plant was done, although at another point of origin the shipments were metered to show the number of gallons actually loaded. Rather than metering at the Newhall plant, all shipments were weighed by certified weighmasters and so certified on the shipping document. No explanation of the gallonage figures shown on the documents was provided to the staff rate expert. Since the rate expert used the gallonage figures shown on the document, which are inaccurate, in computing the weight in accordance with Item 30 of MRT 6-B, the staff agreed to recompute those shipments using the certified weights. The results of the recomputations are contained in Exhibits 11 and 12 and late-filed Exhibit 16.

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<sup>1/</sup> Staff witness testified the undercharge citation (No. F-1578) was served upon Sad Sam's on October 12, 1978.

The undercharges developed by the staff are summarized below.

TABLE 1

<u>Shipments</u>	<u>Undercharges</u>		<u>Recomputed Undercharges</u>		
	<u>Exh. 9</u>	<u>Exh. 10</u>	<u>Exh. 11</u>	<u>Exh. 12</u>	<u>Exh. 16</u>
263 (Exh. 4 & 5)	\$ 9,959.41	\$	\$7,063.34	\$	\$
63 (Exh. 6)	957.40				719.88
4 (Exh. 6)	53.91				
7 (Exh. 6)	233.24		174.08		
386 (Exh. 7 & 8)		<u>17,631.89</u>		<u>11,661.27</u>	
Totals	\$11,203.96	\$17,631.89	\$7,237.42	\$11,661.27	\$719.88

The total undercharges, before recomputation, amount to \$28,835.85. After rerating, the total undercharges amount to \$19,672.48. After recomputation the reduction in undercharges is \$9,163.37.

Exhibit 13 sponsored by the staff rate expert contains excerpts of the American Petroleum Institute's "Glossary of Terms" used in petroleum refining and excerpts from the Petroleum Products Handbook which defines residual fuel oil as topped crude oil or viscous residuum obtained in refinery operations (See also Bunker "C" fuel oil). Bunker "C" fuel is defined as "a heavy residual" fuel oil used by ships, industry, and for large-scale heating installations. The United States Navy calls it "Navy Heavy". In industry, it is often referred to as No. 6 fuel. The excerpts from the Petroleum Products Handbook define reduced crude by referring to topped crude which is defined as a residual product remaining after the removal, by distillation or other artificial means, of an appreciable quantity of the more volatile components of crude petroleum.

Respondent Stanley's Evidence

Stanley testified that (1) he is now the sole owner of the former partnership of Sad Sam's; (2) his only

knowledge of the commodity transported comes from the information which the shipper puts on the bill of lading in this case, topped crude; and (3) if his tank trucks were loaded to the 6,800, 7,000, or 7,200 gallon figure shown on the freight bills, which he contends reflect tank capacity not actual gallons loaded, his trucks would be overweight and he would be cited by the California Highway Patrol (CHP). Exhibit 14 sponsored by Stanley is an office memo signed by Officer L. D. Short, Badge No. 5940 of CHP, which states that the legal weight is 80,000 pounds and, based on the weight shown on Freight Bill No. 84 and the gallonage, there would be 3,900 pounds overweight for which a CHP Form 215 would be issued; that he informed the staff's field investigator these gallonage figures represented the tank capacity, not the actual gallons loaded; and that he also informed the investigator that if these were the actual gallonages he would be overweight.

Stanley stated that he believes it is the duty of the staff to help the trucker to determine what rates he is supposed to be charging. He also believes that the staff should help him to determine what the commodity is since he claims that he has no way of knowing other than what the shipper tells him. He also stated that he knew beforehand what the flat charge would be for the hauling performed for Newhall; that he did not know who set up the flat rate system of payment but that he originally had been charging a flat rate when he was hauling under the operating rights of R & T Transportation. When he obtained his own permits he merely continued using the same charges. He stated that the staff's transportation representative told him the Commission would probably not do anything about the fact that he was charging a flat rate, nor did the staff investigator advise him to stop charging on a flat-rate basis. Stanley stated that, at the time, he thought his method of charging was legitimate since he was making a profit and was not violating any laws. However, under questioning he admitted that he now realizes that there is no provision in the tariff for charging on a flat-rate basis and that since this investigation was instituted Newhall has stopped using his services.

Respondent Newhall's Evidence

Newhall presented its case through three witnesses and one exhibit.

Mr. Sherman, the terminal manager for National Molasses Company, testified with respect to the facilities at the point of destination of the shipments involved here that is, Pier A Avenue, Long Beach. He testified that they have excess storage capacity and therefore have leased some of their tanks to a subsidiary of Newhall viz. Pauley Trading. Mr. Sherman sponsored Exhibit 15 which consists of seven colored photographs which show that the tank farm destination of the topped crude shipments is served by a railroad siding; he stated that there is an active rail siding agreement in effect with the Southern Pacific Railroad Company for that particular service.

Sherman stated that the staff witness did contact him by talking to him over the phone. He believed the general gist of what the staff investigator was inquiring about was the type of material that was stored at his terminal and/or delivered to Exxon across the street via pipeline. Sherman could not recall exactly what he told him but he suspected he said Bunker fuel oil or probably fuel oil. He did state that the field investigator never asked him what commodity was being put into the tanks. Sherman stated that the field investigator contacted him just a week before this hearing, which would be about September 1. He also stated that he was subpoenaed by the staff.

Newhall's next witness was a Mr. Jones, one of its own employees, whose job at the time involved in this matter was a marine fuel oil coordinator at Pier A Terminal in Long Beach. His duties were to control the quantity and the specifications and coordinate the shipments to Exxon. He took daily samples of the product to an independent laboratory to determine flash point of the products

in the tank at Pauley. It was necessary to take the samples because the product from the refinery would not meet specifications and had to be blended to make a salable product. Approximately 50 percent of the material in the tanks at Pauley came from Newhall. The flash points of some of this material ranged from 80 to 90. Additional fuel was purchased from different brokers to be blended with this product to bring it up to a shippable or movable product. Mr. Jones stated that he did talk to the staff field investigator but never told him what material Newhall shipped to Pauley. Under cross-examination Mr. Jones described the product that was shipped from Newhall to Pauley as a low-flash high-gravity cutter stock, topped crude. He pointed out that the product, as received from Newhall, is not in a usable form for the purposes for which Pauley purchased it. To make it marketable it has to be blended with a heavy fuel oil to bring up the flash point. Mr. Jones said that it is not possible to determine the flash point of the individual shipments from Newhall after the product is commingled in the Pauley tank.

The last witness for Newhall was its vice president, Mr. Kenny. Kenny stated that in addition to being a vice president of Newhall, he is also vice president of Pauley, the consignee of the shipments involved here. Newhall and Pauley are wholly owned subsidiaries of Pauley Petroleum, Inc. His responsibilities involve the acquisition of the crude oil supply; to make product exchanges; to purchase product on the outside; to market the products that are made at the refinery; as well as being involved in administrative duties. He testified that the refinery leases a railroad siding from Southern Pacific Company which is located on Market Street in the town of Newhall about 1 mile from the refinery site. Newhall ships in excess of a million barrels of product by rail to the Marlex facility in Long Beach. Southern Pacific solicits Newhall monthly for rail shipments. He also testified that Newhall owns somewhere between 14 and 16 truck units. The \$90 flat rate was developed from a rail rate for use in their proprietary operations. According to Mr. Kenny the proprietary truck operation produced a profit of 8 to 12 percent.

With respect to the product<sup>2/</sup> that is shipped from Newhall to Pauley, Mr. Kenny testified that it consists of a conglomeration of various products which, prior to the public's concern for the environment, were dumped into the creek. The products are accumulated into a special tank at Newhall's refinery. These products consist of jet fuel that comes in "off spec" and cannot be shipped under government or commercial aircraft contracts; bleedings from gasoline tanks, and various accumulations of what is called slop. The product, as such, is not marketable at a profit. After the product arrives at the Long Beach Terminal it has to be blended with something else to make it a marketable product and to meet Exxon's specifications. He confirmed the fact that some of the product accumulated at Pauley had a flash point as low as 80 degrees. Mr. Kenny could not identify the product shipped to Pauley with any product listed in Item 30 of MRT 6-B. Kenny stated that there are no facilities to meter the product known as topped crude. He also said that the only products that are metered at Newhall, are gasoline, jet fuel, and diesel which come from a different loading rack than from where the topped crude is shipped. He stated that it was never their intent to violate any of the PUC rules or regulations. On further examination, Mr. Kenny stated that at the present time they are not using Sad Sam's to transport topped crude to Long Beach but are using their own trucks because of the decreased volume involved. He also stated that whether they use their own trucks or an outside carrier the same flat rate is involved.

#### Staff Rebuttal

In rebuttal the staff recalled its rate expert who testified that if topped crude was not specifically described in MRT 6-B and was not a residual fuel oil, it is still ratable under MRT 6-B. He indicated that topped crude would come under rate Group E which consists of petroleum products named in the classification other than those specifically named in Item 30 of MRT 6-B. In other words, he stated that rate Group E is a catchall rate group. He also stated that since Mr. Kenny indicated that the commodity might be

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<sup>2/</sup> Mr. Kenny testified that in the fiscal period of 1977 approximately one million barrels of fuel were received by Pauley Trading from Newhall.



called a gas oil that would come under rate Group D which contains two items, namely, residual fuel oil and gas oil. Gas oil as such a commodity is not dependent upon a finding of a flash point as is the situation with residual fuel oil.<sup>3/</sup> With respect to the alternate ratings provided, the rate expert stated that his original rating would stand except that instead of using the provided weights (those based upon an 8.3 pound weight per gallon) the shipper's certified weights could be used. The rate expert did not agree with Mr. Kenny's statement that Item 30 of MRT 6-B should not apply because he states that rate Group E in Item 30 refers to petroleum products as listed in the petroleum products group of the governing classification, which is the National Motor Freight classification 100-D. In Item No. 155250 of the classification oil gas and oil NOI are listed.

#### The Issues

Respondent Stanley sets forth six issues as follows: burden of proof; establishment of commodity; inept and inadequate investigation; confirmation versus investigation; nonclassification of commodity; rail spur-rating; and actual gallonages versus estimated gallonages-tank capacity.

The staff defines the issues as follows: Does MRT 6-B apply to the commodity described as "topped crude"? If so, did assessment of a flat charge by Sad Sam's and Stanley meet the requirements of MRT 6-B? Are rail rates applicable to these shipments under the alternative application provisions of MRT 6-B? If the commodity topped crude is classified as residual fuel oil under rate Group D, should the undercharges be based upon the provided weight of 8.3 pounds per gallon and the carrier's gallonage figures?

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<sup>3/</sup> Residual fuel oil under rate Group D is subject to the following note in Item 30: "The term 'Fuel Oil' as used in this item does not include petroleum products having a flash point below 110 degrees Fahrenheit (Tagliabue closed cup) or which have 95 percent distillation points below 464 degrees Fahrenheit."

The essential issues are as follows:

1. Did respondents Sad Sam's and Stanley assess and collect charges for transportation performed for respondent Newhall on a basis different than that required by MRT 6-B?
2. If so, did such assessments result in charges less than those resulting from the application of the rates prescribed in MRT 6-B?
3. Did respondent Stanley conduct operations as a permitted carrier during the period his permit was in suspension?
4. If respondents Sad Sam's and Stanley assessed and collected charges less than those prescribed in MRT 6-B, what sanctions should be imposed upon Stanley?

Discussion

Respondents Sad Sam's and Stanley's motion to dismiss (hereinafter discussed) is founded on the assertion that the staff failed to carry its burden of proof. It is pointed out that the staff field investigator made an assumption as to the nature of the commodity rather than developing a fact, and concluded that it was residual fuel oil. It is also pointed out that the investigation to determine whether or not the origin and destination points were served by rail was less than adequate. The staff witness categorically stated that the destination was not served by rail. Exhibit 15 shows a rail spur at the destination. The field investigator was not even aware of the name of the railroad, nor the fact that rail service was available to Newhall.

There is no question that the burden of proof rests upon the party claiming that a carrier has violated the law or an order of the Commission. While the quality and quantity of the staff's field investigation may leave much to be desired such insufficiency is not fatal to the staff's case.

Concerning issue No. 1, Item 180 of MRT 6-B<sup>4</sup> provides that rates shall not be assessed based upon a unit of measurement different from that in which the minimum rates are stated. The evidence is uncontroverted that Stanley did not use the units of measurement or rates as provided in MRT 6-B. Rather he assessed a flat rate for which there is no provision in MRT 6-B other than the exception set forth in Item 180 which requires that where charges are assessed on a basis different from that provided in the tariff they must produce a charge not less than that which would have been produced had the minimum rate been used and that the shipping documents contain all the information necessary to compute the freight charges on the basis of the unit of measurement provided in the tariff. Neither of these requirements was met by Stanley. Thus, while the actual description of the commodity may be in question, there can be no question that Sad Sam's and Stanley did not comply with the requirements of Item 180 and therefore, to that extent, were in violation of the Commission's minimum rate order.

With respect to issue No. 2, evidence is uncontroverted that the charges as assessed by Sad Sam's and Stanley were less than the charges would have been had the minimum rates been used. Exhibits 9 and 10 demonstrate that the undercharges would be \$28,835.85 if the commodity is rated as residual fuel. However, inasmuch as the commodity described as "topped crude" has a flash point below 110 Fahrenheit, it is not ratable as residual fuel oil under rate Group D.

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4/ UNITS OF MEASUREMENT TO BE OBSERVED "1. Except as provided in paragraph 2, rates or accessorial charges shall not be quoted or assessed by carriers based upon a unit of measurements different from that in which the minimum rates and charges in this tariff are stated. "2. Rates or accessorial charges may be quoted or assessed by carriers based upon a unit of measurement different from that in which the minimum rates and charges in this tariff are stated, provided (1) that the freight charges assessed are not less than those which would have been assessed had the rates and accessorial charges stated in this tariff been applied; (2) that the carrier's shipping documents contained all the information necessary to compute the freight charges on the basis of the unit of measurement provided in this tariff."

It would therefore come under rate Group E, which refers to commodity descriptions contained in the governing classification. The specific description of "topped crude" is not listed, but there is the description "oil NOI [Not Otherwise Indexed]". Such a description is designed to cover petroleum products not more specifically described in the governing classification. Thus, the commodity described by Newhall as "topped crude" is ratable under MRT 6-B and is ratable on an actual weight basis. The freight bills contain certified weights. Thus, Sad Sam's and Stanley assessed charges less than those resulting from the application of the rate Group E rates prescribed in MRT 6-B to the extent set forth in Exhibits 11, 12, and 16.

The other dispute with respect to undercharges involves 4 shipments of asphalt and 7 shipments actually described as residual fuel oil by the shipper which are contained in Exhibit 9. The residual fuel oil shipments were assessed at a \$60 flat rate. These 7 shipments were rerated on a weight basis in staff Exhibit 11. With respect to the undercharges for excess loading and unloading time, which is where the dispute lies with these shipments, we will accept the staff's determination of the amount of undercharges, inasmuch as it is incumbent upon the carrier to not only correctly describe the shipments transported but also to include all other information on its freight bill that is necessary to accurately rate the shipment in its totality.<sup>5/</sup>

It has been shown that Sad Sam's and Stanley not only assessed charges on a basis different from that required by MRT 6-B but that such assessment of charges resulted in charges less than those which would have resulted had the minimum rates been applied; therefore, we can conclude that Sad Sam's and Stanley violated

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<sup>5/</sup> Item 210(n) MRT 6-B.

Section 3664 of the Public Utilities Code.<sup>6/</sup> In view of the fact the staff did not prove the commodity to be residual fuel oil, we will adopt the recomputed undercharges set forth in Table 1.

Issue No. 3 involves the question of whether respondent Stanley conducted operations as a permitted carrier during the period his permit was in suspension. No evidence was presented by the staff that Stanley conducted operations while his permit was in suspension. Our answer to issue No. 3, therefore, must be in the negative.

Concerning issue No. 4, the staff requests that Sad Sam's and Stanley be directed to pay fines in the amount of the undercharges found; that the carriers be directed to collect said undercharges from Newhall; that punitive fines of \$2,500 be assessed against each respondent carrier; and that the carriers be directed to cease and desist from charging and collecting less than the minimum rates prescribed by the Commission for the future.

Stanley admitted that he was charging a flat rate which rate was not provided in the MRT 6-B. The only evidence in mitigation adduced by Stanley was that (1) he claimed he was in the trucking business; (2) he was not responsible and did not know who was responsible for describing the commodity shipped; (3) he could not read the tariffs, nor understand them; (4) other people prepared the shipping documents and the freight bills for him; and (5) he relied strictly upon the shipper for the description of the commodity; and (6) the staff did not help him in rating his shipments.

We must point out that when a person applies for and receives a permit to transport property for compensation over the public highways he is obligated to abide by all the rules,

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<sup>6/</sup> "3664. It is unlawful for any highway permit carrier to charge or collect any lesser rate than the minimum rate or greater rate than the maximum rate established by the commission under this article."

regulations, and requirements of the applicable minimum rate tariff. If he does not understand such tariff it is incumbent upon the carrier to inform himself on its use. Therefore, a carrier's lack of knowledge, or the difficulty in understanding the tariff, does not constitute a sufficient defense for failure to collect proper tariff charges. (Charles A. Vander Heyden (1974) 77 CPUC 764; Spencer Truck Company (1958) 56 CPUC 695.)

Respondent Newhall's argument deals primarily with the lack of an adequate investigation by the staff and, therefore, its failure to carry the burden of proof. Newhall argues that there is a possibility that rail rates may have been applicable and that the staff made little or no attempt to determine (1) whether the origin and or destinations were served by rail and (2) whether there were any applicable rail rates.

While it appears that the staff's investigation was not as thorough as it should have been, this does not completely negate its efforts. The determination of whether or not there was an applicable rail rate was not essential to the question of whether or not Sad Sam's and Stanley violated the provisions of MRT 6-B.

As a shipper Newhall has the responsibility of correctly describing the commodity shipped.

We do not agree with the staff that the product shipped is properly ratable under rate Group D as residual fuel oil. The staff's evidence in this area is far from clear and convincing. However, this is not fatal to their case. There is no question that the shipments described as "topped crude" are ratable under MRT 6-B, as stated previously. Rate violations, regardless of whether they are deliberate or caused by negligence or ignorance have a disturbing economic impact upon the trucking industry. The burden is upon the shipper to properly describe the shipment and upon the carrier to rate the shipments correctly.

Motion to Dismiss

At the close of the staff's direct presentation of its case, respondent Stanley moved for dismissal on the grounds that the Commission staff had failed to meet its burden of proof. Stanley alleges that the staff did not adduce the required quantitative and qualitative amount of evidence to establish that the commodity transported in fact was residual fuel oil covered by MRT 6-B, rate Group D. The motion was taken under submission with the direction to respondent Stanley that said motion should be reduced to writing and filed after the submission of the case, with supporting points and authorities. In its brief, respondent Newhall also requests that this investigation be dismissed. The grounds for relief are that the staff has (1) failed to identify the product being transported; (2) has failed to establish the proper rate or charges for the shipments; and (3) has failed to establish a basis for demurrage charges.

Respondent Stanley argued that the staff investigator apparently made an assumption that the commodity, which was described on the shipping documents as "topped crude", was residual fuel oil, but the staff never introduced any evidence to establish the foundational basis for this conclusion. Stanley points out that the staff investigator's own testimony shows that he had available to him a conclusive source of information upon which to base his conclusions regarding the identity of the commodity but chose to ignore this source, i.e., Newhall Refining Company flash point testing.

The staff field investigator admitted he made no contact with Newhall to confront it concerning the identity of the commodity. It is pointed out that the testimony of Newhall's witness, an executive of the refining company, shows that the refinery keeps a record concerning the flash points of the commodities being shipped which would have indicated more conclusively the nature of the commodity being hauled by Stanley. The records were available upon request.<sup>7/</sup> It is argued that the staff investigator chose to rely upon hearsay, rumor, and second-hand information from sources wholly unrelated to the refining and shipping of the commodity from Newhall to Pauley Trading Company (Pauley) located at the National Molasses Company's tank farm in Long Beach.

We are requested to dismiss these proceedings pursuant to Evidence Code Section 412 which reads as follows:

"Party having power to produce better evidence:  
If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be used with distrust."

Respondent Stanley relies upon three other sections of the Evidence Code which are set forth below:

Evidence Code 500

"Except as otherwise provided by law, a party has the burden of proof as to each fact, the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting."

Evidence Code 520

"Claim that person guilty of crime or wrongdoing:  
The party claiming that a person is guilty of a crime or wrongdoing has the burden of proof on that issue."

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<sup>7/</sup> The testimony of Mr. Jones failed to establish that records would be made available upon request to the Commission staff.



Evidence Code 550

"The party who has the burden of producing evidence:  
(a) The burden of producing evidence as to a particular fact is on the party against whom a finding on the fact would be required in the absence of further evidence; (b) the burden of producing evidence as to a particular fact is initially on the party with the burden of proof as to that fact."

Stanley also points to two of our cases in support of his motion to dismiss this matter.

In the case of William H. Hutchinson and Sons, Inc., D.80351 dated August 8, 1972, C.9205, it is stated:

"On the present record, the staff has not met its burden of proof of demonstrating that any undercharges did in fact occur. Given this failure of proof and the staff's complete failure to itself propose a workable formula, we do not think the transportation rate fund or the private resources of respondent should be burdened with further investigation to this matter."

In the case of Moore Truck Lines, D.77034, dated March 31, 1970, A.51182, it is stated that:

"Evidence weighed insufficiently. Staff informal opinion. A warning or an informal opinion expressed by Commission representatives either orally or in writing does not constitute final proof of facts therein alleged."

We will deny the Motion To Dismiss for reasons contained in our discussion of the evidence.

The staff met its burden of proof with respect to establishing the identity of the commodity transported and the proper rates and charges for the transportation (including the basis for the demurrage charges). The minimum rate tariff requires that the shipping document contain an accurate description of the commodity for rating purposes. It is the responsibility of the carrier to prepare the shipping document. The staff attempted to determine the nature of the commodity in order to determine whether undercharges existed. It used the resources available to it to make the determination.

Findings of Fact

1. Samuel H. Stanley and Robert Ross, a partnership, doing business as Sad Sam's Trucking, and Samuel H. Stanley, an individual, were issued permits as petroleum contract carriers.

2. Said permits in Finding 1 were in effect during the periods of time involved in this investigation.

3. Staff Undercharge Citation No. F-1578 was served upon Sad Sam's on October 12, 1978.

4. Sad Sam's denied the violation alleged by Undercharge Citation No. F-1578.

5. After service of the citation the transportation continued to be performed by Stanley.

6. Sad Sam's and Stanley assessed charges for transportation performed for Newhall on a flat rate basis.

7. MRT 6-B does not provide flat rates.

8. The product shipped by Newhall and described as topped crude is, by reason of its flash point, not ratable as residual fuel oil but is ratable under rate Group E in Item 30 of MRT 6-B as oil NOI.

9. Sad Sam's and Stanley charged Newhall less than the minimum rates for transportation. The undercharges are contained in Exhibits 9, 11, 12, and 16 as follows:

Exhibit 9 - Sad Sam's

4 shipments asphalt \$ 53.91

Exhibit 11 - Sad Sam's

263 shipments topped crude 7,063.34

7 shipments residual fuel oil 174.08

Exhibit 16 - Sad Sam's

63 shipments residual fuel oil 719.88 \$ 8,011.21

Exhibit 12 - Stanley

386 shipments topped crude 11,661.27  
\$19,672.48

10. Sad Sam's and Stanley should be ordered to collect from Newhall the undercharges set forth in Finding 6 above.

11. The burden is upon Sad Sam's and Stanley to correctly describe and rate commodities transported by them.

12. Sad Sam's and Stanley assessed charges for transportation performed by them for Newhall on a basis different from that prescribed in MRT 6-B.

13. There is no evidence to show that Stanley conducted operations as a permitted carrier without the requisite authority.

14. There is no evidence to show that Sad Sam's and Stanley collected or that Newhall paid the charges assessed by Stanley for the transportation performed for Newhall.

15. It can be reasonably inferred that the charges were collected by Sad Sam's and Stanley and paid by Newhall in the absence of any evidence to the contrary.

16. Stanley executed an "Assumption of Responsibility" (File T-117044) on January 15, 1980, of which we take official notice.

Conclusions of Law

1. Sad Sam's and Stanley violated Sections 3664 and 3737 of the Code by charging and collecting for transportation at rates different and less than those set forth in MRT 6-B.

2. Sad Sam's and Stanley should be ordered to collect from Newhall the undercharges set forth in the above findings.

3. Separate fines should be imposed upon Sad Sam's (a copartnership) and Stanley pursuant to Section 3774 of the Public Utilities Code.

4. Separate penalties should be imposed upon Sad Sam's (a copartnership) and Stanley pursuant to Section 3800 of the Code.

The Commission expects that Sad Sam's and Stanley will proceed promptly, diligently, and in good faith to pursue all reasonable measures to collect the undercharges including, if necessary, the timely filing of complaints pursuant to Section 3671 of the Public Utilities Code. The staff of the Commission will make subsequent field investigation into such measures. If there is reason to believe that Sad Sam's or Stanley or their attorney have not been diligent, or have not taken all reasonable measures to collect all undercharges, or have 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. Samuel H. Stanley and Robert Ross, copartners doing business as Sad Sam's Trucking (hereafter Sad Sam's Trucking), shall pay a fine of \$2,500 to this Commission pursuant to Public Utilities Code Section 3774 on or before the fortieth day after the effective date of this order. Sad Sam's Trucking 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. Samuel H. Stanley shall pay a fine of \$2,500 to this Commission pursuant to Public Utilities Code Section 3774 on or before the fortieth day after the effective date of this order. Samuel H. Stanley 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.
3. Sad Sam's Trucking shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$8,011.21 on or before the fortieth day after the effective date of this order.
4. Samuel H. Stanley shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$11,661.27 on or before the fortieth day after the effective date of this order.
5. Sad Sam's Trucking and Samuel H. Stanley shall take such action, including legal action instituted within the time prescribed by Section 3671 of the Public Utilities Code, as may be necessary to collect the undercharges set forth in Finding 9 and shall notify the Commission in writing upon collection.
6. Sad Sam's Trucking and Samuel H. Stanley 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 5 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 Samuel H. Stanley's operating authority until the report is filed.

7. Samuel H. Stanley 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 Executive Director of the Commission shall cause personal service of this order to be made upon respondent Samuel H. Stanley and 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 thirty days after completion of service on that respondent.

The effective date of this order shall be thirty days after the date hereof.

Dated JUN 17 1980, at San Francisco, California.

Commissioner Richard D. Gravello, being necessarily absent, did not participate in the disposition of this proceeding.

John E. Bruno  
President  
James L. Sturgeon

Clair J. [unclear]  
Thomas W. [unclear]  
Commissioners