

ORIGINAL

Decision No. 39613

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation into rates, rules, regulations, classifications, contracts, operations, and practices of highway common carriers as defined in the Public Utilities Act, radial highway common carriers and highway contract carriers as defined in the Highway Carriers' Act and carriers as defined in the City Carriers' Act, for the transportation of household goods and related property.

Case No. 4730

In the Matter of the Establishment of rates, rules and regulations for the transportation of property by common carriers as defined in the Public Utilities Act and highway carriers as defined in the Highway Carriers' Act.

Case No. 4246

In the Matter of the Establishment of rates, rules and regulations for the transportation of property by carriers as defined in the City Carriers' Act.

Case No. 4434

Appearances

J. W. Barker, Harold J. Blaine, Daniel P. Bryant, W. L. Carpenter, D. D. Carter, Jim Cummins, W. J. Follett, A. F. Foley, Arthur H. Glanz, Hugh Gordon, Vern Gould, A. L. Hart, E. H. Hart, G. W. Hover, George T. Hurst, W. Ray James, Henry Kearney, H. A. Kern, Otto Knudsen, Irving M. Liner, Hugh McGlyn, Charles L. McPherson, Charles C. Miller, J. E. Monro, James A. Nevel, R. J. Peeters, Arlo D. Poe, Lawrence Strelitz, J. F. Vizzard, and C. P. Von Herzon, for various respondent carriers and carrier associations.

Joseph B. Thomas, for Department of Insurance, State of California.

Benjamin Chapman and M. L. Harker, for the Office of Price Administration.

K. A. Bennett, Annie C. Jenkins, W. F. Johnson, W. H. Murphy, Phillip W. Rainey, J. D. Riordan, Charles H. Robbins, A. P. Shell and M. F. Vineyard, for various shippers and other interested parties.

O P I N I O N

These proceedings were consolidated for taking evidence relative to rates, rules, regulations and practices of highway and city carriers of household goods and related articles. A comprehensive record was made at public hearings had at Los Angeles and San Francisco before Commissioner Clark and Examiner Mulgrew. The examiner issued a proposed report. Exceptions thereto were filed.¹ Oral argument was had.

Minimum rates for the transportation involved and rules and regulations governing their application and otherwise affecting carrier practices have been in effect for approximately ten years. The chief purposes of this further investigation are to determine what, if any, maximum rates should be prescribed and the extent to which, if at all, established rules and regulations are in need of revision. Discussions of these matters follow:

Maximum Rates

The examiner recommended that it be found that the establishment of maximum rate scales has not been shown to be necessary or desirable. In their exceptions respondents characterized this recommendation as equivocal, contended that it was inconsistent with the examiner's conclusion that it had not been established that rates generally observed by the carriers exceeded maximum reasonable levels, and urged that in the Commission's findings "maximum rates" be substituted for "maximum rate scales."

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California Van & Storage Association and United Van & Storage Association joined in filing exceptions to the report. Bekins Van & Storage Co. and Bekins Van Lines, Inc., as well as Lyon Van Lines, Inc., concurred in the Associations' exceptions and, in addition, made separate filings dealing with certain of the examiner's recommendations. All of the exceptions are incorporated in these three filings.

On oral argument it was developed, however, that the differences between the examiner's and respondents' views with respect to maximum rates were confined to the charges resulting from certain of the carrier practices which will hereinafter be discussed. The maximum rate question will, therefore, be disposed of following the treatment of practices.

Rate Quotations and Estimates of Charges

The proposed report deals at length with rate quoting and estimating practices. It points out, among other things, that the carriers' practices have not been uniform; that shippers have been supplied with inadequate and misleading information; that some of them have not been fully advised and others have been misinformed of the bases on which charges were to be assessed; and that numerous complaints and considerable shipper-carrier controversy have stemmed from the failure of the carriers to supply the information essential to an understanding of how charges were to be determined.

The report also notes that highway common carriers (carriers subject to the Public Utilities Act) are required to file their actual or "going" rates with the Commission and that radial highway common, highway contract and city carriers (carriers subject to the Highway and City Carriers' Acts) are not required to do so; that the tariff filing carriers may not deviate from their filed rates; and that the other carriers may charge the rates prescribed as minima or higher rates so long as they observe the same units of measurement (cents per 100 pounds, cents per hour, etc.) as those used by the Commission in stating the corresponding minimum rates.

So that radial, contract and city carrier rates may be definitely established prior to transportation, the examiner recommended that these carriers be required to make quotations of

their rates when shippers request that they do so and to assess and collect charges based on rates not higher than those quoted. In recognition of the possibility of rates lower than the established minimum rates being quoted, he further recommended that the minimum rate basis be required to be observed in any such instance.

To avoid misunderstandings or clear them up in advance of shipment, the examiner concluded that the carriers should reduce their agreements with shippers to writing before the goods are transported. He recommended that it be required that shipping documents issued by the carriers in connection with the receipt of property for transportation show, either specifically or by cross-reference to other instruments, and before the shipping documents are signed by the shippers, the quotations or estimates which have been furnished or note the fact that they have not been supplied. Written estimates, he said, should be accompanied by statements to the effect that the hours, weights, or other units of measurement will be corrected to reflect the actual number of hours, weights or other units, and to the effect that charges will be collected on the actual rather than the estimated basis.

Respondents contend that adoption of the foregoing recommendations would not accomplish the desired results, would unduly burden the carriers with record keeping with little or no benefit to them or to the shippers, and would lead to hopeless confusion. It is not feasible, they argue, for the carriers to keep written records of all telephone requests for rate quotations and of all oral estimates based on shippers' representations of the volume and character of their goods. They insist, moreover, that it would be utterly impossible for the carriers to review voluminous records of this nature at the time of shipment in order to determine

what oral representations might have been made.

The carriers also urge that no complete estimates of charges be permitted except after examination and analysis of prospective shipments by the carriers or their agents. They would permit the carriers to estimate weights or hours orally, based upon information furnished by shippers, provided the carriers do not make calculations of the resulting charges. In regard to written estimates made after examination and analysis of the goods to be shipped, the carriers object to incorporating the estimates in shipping orders or to cross-referencing these estimates and orders. Such requirements they characterize as unnecessary. It is sufficient, they argue, to require that the estimate be left with the shipper and that a copy of it be retained in the carrier's files for one year. They agree with the examiner that written estimates should incorporate statements designed to caution the prospective shipper that the indicated charges are estimates only, not warranties or guarantees that actual charges will not exceed those estimated.

Respondents concede that it is a carrier responsibility to see that shippers are furnished rate quotations in a manner consistent with that used in stating the tariff or minimum rates, and that radial, contract and city carriers are not justified in collecting higher charges than those resulting from the application of the quoted rates except where such higher charges are necessary in order to avoid conflicting with minimum rates. They strenuously object, however, to the carriers being required to observe quoted rates as maxima on the grounds that the record is neither appropriate nor adequate for fixing maximum rates of any description. Unscrupulous or careless carriers, counsel for respondents stated,

might be more effectively dealt with through proceedings brought under the provisions of civil or criminal law, by revoking operating authority, or by rules promulgated within the minimum rate structure.

It is clear that shippers generally are not properly informed in regard to the bases of the charges to be assessed. Carriers make representations with respect to rates and charges which are incorrect, incomplete or otherwise misleading. For the most part the carriers appear to make little or no effort to deal openly and fairly with shippers. For example, the services the carriers will undertake to provide and the methods they will use in determining charges are not fully explained and, where quotations or estimates have been furnished, circumstances and conditions which will result in higher rates or charges being observed are not made apparent to the shippers. Such practices are inconsistent with respondents' obligations as for-hire carriers.

In these circumstances it is apparent that steps must be taken to clarify agreements between carriers and shippers and to see that the carriers meet their responsibilities thereunder. To do so it is essential that it be required that the agreements between carriers and shippers be reduced to writing. It is neither feasible nor necessary, however, to incorporate all of the information called for under the examiner's recommendations in shipping orders. Instead it will be required that the carriers issue a written confirmation of shipping instructions and rate quotation which will describe the transportation and accessorial services to be undertaken and the rates to be charged for the services involved. Immediately following this information, the document, when issued by radial, contract or city carriers, should prominently call attention to the fact that the actual number

of hours, actual weight or actual number of other units of measurement, rather than any estimates or approximations thereof, will be used in connection with the determination of charges; that the rates, including minimum weight or other minimum provisions, stated in the confirmation and rate quotation form supersede any previous rate quotations, estimates or representations concerning the charges to be assessed; that minimum rates have been prescribed by the Commission for the transportation of used household goods and must be protected in the event they are higher than the rates specified by the carrier; and that the Commission's tariff of minimum rates is open for public inspection at the Commission's and the carrier's offices. Carrier and shipper having thus reached an agreement with respect to the measure of the charges, the carrier should not be permitted to observe rates higher than those agreed to, except when the rates specified conflict with the minimum rates, in which event rates not higher than the minimum rates should be required to be used. To the extent that this involves the exercise of the Commission's maximum rate fixing authority, it appears fully justified by the facts and circumstances of record here.

A similar document should be required to be issued by highway common carriers. In the case of these carriers the statement following the rate quotation should point out that their applicable rates are those provided by their tariffs on file with the Commission and in effect at the time of shipment and which are open for public inspection at the Commission's and the carriers' offices. These documents should also state that, notwithstanding any different rate quotations, estimates or representations which may have been given or made, the tariff rates apply.

General requirements relating to the issuance of these

documents which also appear necessary are that they be issued in duplicate, that they be presented to shippers and signed by shippers and carriers prior to rendition of any service involved, and that where the shipper requests additional service or desires to supplement shipping instructions, a revised or supplemental document, so indicated, be issued. One copy of each such document is to be given the shipper, the other copy retained and preserved by the carrier for the 3-year period other shipping documents are now required to be kept. Suitable forms of the confirmation of shipping instructions and rate quotation document are attached hereto as Appendix "A".

The foregoing requirements appear to be necessary in order to cure the rate quoting and estimating abuses disclosed by the record. They should make the bases of charges apparent to shippers without imposing any undue burden upon the carriers; reduce materially the controversies and complaints which have attended the transportation of used household goods under prevailing practices; and should, therefore, be adopted as reasonable and proper practices to be observed by the respondents.

Commissions

The examiner recommended that "commissions" (payments for business secured) paid to persons who are not carriers be limited to 5 per cent of transportation charges, on the grounds that such payments would be reasonable and preserve for the carriers an economical and needed solicitation service.

Respondents' exceptions and their oral argument disclose that there are "two schools of thought" in the matter, one of which supports the examiner's recommendation for similar reasons, and another which advocates prohibition of the making of the payments in question so as to avoid asserted abuses of this practice.

The record indicates that the necessities of numerous carriers require that they be permitted to continue to pay commissions to persons who are not carriers. The imposition of the recommended maximum for such payments appears amply supported by the showing made and should be adopted.

Delivery of Shipments in "Long Distance Moving" Service

The proposed report points out that in "long distance moving" (transportation for more than 30 miles) considerable difficulty often attends the delivery of the property. It recommends that notification addresses be obtained from consignors and incorporated in the shipping orders, in order that consignees or their agents at the notification addresses may either accept the goods or furnish disposition instructions upon arrival of the shipments at the destination points. The report also recommends that, when consignors are unable or unwilling to supply such addresses, an endorsement to that effect be made on the shipping orders. With respect to additional charges on shipments which cannot be delivered upon their arrival at destination points, the examiner proposed that such charges be limited to those set forth in the shipping orders or in properly cross-referenced documents, which, he said, should cover the agreed basis with respect to notification, the duration of any free waiting time and storage and subsequent delivery arrangements.

In their exceptions, respondents interposed no objection to acquainting shippers with contingencies which may result in the accrual of additional charges, or to incorporating notification addresses on the shipping orders. Indeed, they suggested that the shipping documents carry a statement to the effect that on non-deliveries caused by the inability of the consignees to receive the goods "storage and redelivery charges will be assessed on the basis

of rates prevailing at the point of destination."

On oral argument respondents contended, however, that orderly practice required carriers to record the name, address and telephone number of the consignee on all consignments accepted for transportation. Without a delivery address, counsel for respondents said, he could not conceive of any carrier accepting a shipment. He also questioned the value of a statement of the consignor relating to the name of the consignee and his address.

Regarding the incorporating of all arrangements concerning additional charges resulting from delivery failures, respondents strenuously urge that it would be impossible to cover all contingencies. The number and variety of such arrangements, they insist, preclude this being done. To be required to bear the burden of shipper delinquencies in this fashion, they claim, would be manifestly unfair.

As in the case of the rate quoting and estimating problem, the important consideration here is that agreements be reached in advance of transportation. It is appropriate, therefore, that full information relating to notification and circumstances under which additional charges will accrue in connection with delivery failures be required to be included in the confirmation of shipping instructions and rate quotation documents.

In regard to notification, it seems evident that the delivery address is not necessarily the address at which the consignee desires notification of the availability of his goods for delivery. Certainly respondents do not expect a consignee to remain in an unfurnished dwelling continuously from the earliest time he assumes the consignment might arrive until it is actually on hand. If notification at a hotel, place of business or other location differing from

the delivery address is desired this can be readily noted. Where the notification and delivery addresses are the same, that fact can likewise be noted without difficulty. It is essential that the manner of notification be specified. Should the shipper decline to supply a notification address, the fact that it was requested and not furnished should be indicated.

When storage and rehandling result from the failure of the carrier to carry out arrangements made with the shipper concerning notification and delivery, the cost of such additional service is not properly chargeable to the shipper. On the other hand, such expense should not be required to be borne by the carrier when the shipper fails to meet his obligations under these arrangements. It does not seem feasible, under the many circumstances and conditions which may surround deliveries, to prescribe practices which cannot be deviated from under extenuating circumstances. Revised or supplemental agreements with the shippers concerned should be permitted when unforeseen contingencies arise. Shippers should, however, be given reasonable opportunity to be acquainted with their obligations under the initial agreements and the penalties for failure to meet them. In regard to these penalties, it appears that the detailed information recommended by the examiner to be shown on written documents would seriously burden the carriers without commensurate benefit to them or their patrons.

In view of the foregoing it is concluded that, where notification pursuant to the consignor's instructions is made in advance of the arrival of the consignment and the consignee fails to accept the goods upon their tender at the time specified in the notification, the carrier should not be penalized by being required to absorb storage, rehandling or other charges occasioned by the consignee's failure to meet his obligation to receive the shipment.

Similarly, when the shipper elects not to supply a notification address the carrier should not be forced to shoulder additional expense attributable to failure of the consignee to receive the goods upon arrival at the designated destination. It is sufficient in such cases that the confirmation and rate quotation form carry appropriate statements outlining the notification arrangements, or the lack of definite arrangements, and calling attention to additional charges which will accrue for storage and further transportation should the goods not be received after notification and tender of the goods under the agreement.

Where the carrier fails to fulfill its obligation to notify the consignee pursuant to the agreement reached, or fails to request a notification address, it should be required to make delivery without additional charge for storage or extra handling. In this respect, as in the case of the requirement that quoted rates be observed, it appears that any exercise of the Commission's maximum rate fixing power thus involved is abundantly justified by the record.

On the basis of the showing made concerning deliveries of "long distance moving" shipments, adoption of the foregoing requirements appears necessary to establish reasonable and proper practices for the handling of such consignments.

Insurance

The proposed report directs attention to the fact that the basic minimum rates are limited in their application to shipments on which the shipper has stated an agreed or declared valuation of not in excess of 10 cents per pound per article. Higher rates are provided for greater valuations. The optional bases for greater valuations are rarely used. Shippers either run the risk of sustaining loss or damage to their property exceeding carrier liability or purchase insurance

against such losses. Many of the carriers make this insurance readily available.

In regard to the carriers handling insurance, the examiner recommended that they be required to describe the types of coverage available on the shipping order or other written document signed by the shipper prior to transportation. He also recommended that it be required that the character of any insurance ordered be indicated and that adequate written records, cross-referenced with freight bills, containing information concerning the collecting and remitting of premiums be kept. For carriers not undertaking the handling of insurance, the recommendation made was that their shipping orders state that they do not make arrangements for insurance. In other respects, the examiner concluded, protection against improper practices is afforded shippers by the State Insurance Code and regulatory activities of the Department of Insurance.

Exceptions to these recommendations were not filed. On oral argument, however, respondents took the position that where a carrier receives an order and payment for insurance and a policy is not taken out it is plainly a fraud and a violation of the Insurance Code. This, it was claimed, is the chief difficulty in insurance handling by carriers and not a matter requiring the promulgation of rules by the Commission. It was further developed, however, that respondents considered it advisable to supplement written estimates by incorporating provisions stating that the carrier assumes liability for loss or damage only up to the agreed or declared valuation and that if the shipper desires insurance for any greater value "special arrangements" should be made for that purpose.

In view of the conclusions hereinbefore reached with respect to estimating, it would not be sufficient to have provisions relating to insurance incorporated in any estimating form voluntarily used by the carriers. It appears necessary, however, that insurance coverage be described in writing by the carriers only when the insurance is placed through them. Cross referencing to freight bills does not seem to be needed. In other respects, the recommendations of the examiner, supplemented by the statement of the limitation of carrier's liability suggested by respondents, appear to be desirable and necessary features of the confirmation of shipping instructions and rate quotation form and appear to constitute reasonable and proper carrier practices with respect to insurance matters.

Dual Operations by the Same or Affiliated Carriers

Certain respondent highway common carriers who also hold radial highway common carrier permits have assessed charges for services within the scope of their highway common carrier operations on bases higher than those provided by their filed tariffs. Characterizing the claim of one of these carriers that he could operate both as a highway common and radial highway common carrier of household goods between the same points as having little substance and no merit, the examiner recommended that highway common carriers holding radial highway common carrier permits and assessing charges differing from those specified in their tariffs for services within

the scope of their highway common carrier undertakings be admonished that such action constitutes a violation of the Public Utilities Act which should be discontinued. He further recommended that such carriers be required to make adjustments to the basis of their tariff rates on past shipments. No exceptions were filed to these recommendations. They should be adopted.

The proposed report also calls attention to the practice of affiliated carriers (separate corporations of similar ownership and management) channeling shipments into the radial affiliates' operations under rates higher than those maintained by the highway common carriers. The examiner noted that the names of the affiliates are similar and that no effort is made to dispel the impression given shippers that they are dealing with one organization rather than with two or more.

It is unreasonable, the examiner concluded, for the management of affiliated companies to make the election as to which carrier will handle a shipment and to fail to inform the shipper of the services and rates available. Certain of the highway common carriers involved having indicated that they would apply for authority to increase their rates to what they deem to be proper levels, the report proposes that where affiliates supply satisfactory assurances that the radial carriers will observe charges no higher than the common carriers' tariff rates no further action be taken. As to those carriers which do not desire to follow this course, further investigation is recommended to determine the extent to which, if at all, operative rights of affiliated carriers should be limited or revoked so as to cure abuses stemming from unrestricted dual operations.

Respondents urge that adoption of the recommendations with respect to the operations of affiliated carriers is unnecessary, that such action would be unlawful, and that the record made affords no support therefor. They claim that they are entirely

within their rights in continuing their present practices and that the contemplated adjustment of highway common carrier rates and the return to a more normal flow of traffic will obviate any necessity for further action by the Commission. Counsel for two of the respondent highway common carriers said that at the suggestion of this or some other regulatory agency they had shown the names of various affiliates on their shipping orders and other documents but were arranging to have separate forms used by each carrier. They are strongly insistent that there is no lawful means whereby their rights to function as separate entities may be curtailed or impaired in any way.

In many respects, however, the affiliates' operating methods are such that the separate entities are, for all practical purposes, fictitious rather than real. For the most part the affiliates employ the same personnel and use the same facilities. Their common ownership and management is also reflected by allocations of revenues and expenses and other intercorporate arrangements. Moreover, in their dealings with the public they frequently operate under the guise of being one carrier.

It is apparent that the affiliates are evading their responsibilities as for-hire carriers. On the one hand they insist that they are separate carriers and have the right to so operate, while on the other hand they conduct their affairs in a manner which disguises the fact that they hold dual operating authority. They fail to inform shippers of any differences in the service available to them and in the rates therefor. Their records, which reflect allocations of revenues and expenses along broad lines, fail to portray accurately the financial results of the operations of the individual carriers.

Further investigation, as recommended by the examiner, does not appear necessary. Instead, each of the affiliated carriers

should be required to operate as a separate entity and in such a manner as to avoid misleading the public. All records should be kept on an individual carrier basis. Salaries and wages of personnel assigned duties involving the activities of two or more affiliates should be paid on the basis of the work performed for each carrier. Likewise, expenses for facilities and equipment used by affiliates should be prorated on the basis of the use made of such property. Revenues from joint undertakings should be divided on an individual transaction basis, rather than under a blanket arrangement.

In their dealings with the public, all shipping documents and other written instruments issued by affiliated companies should bear only the name of the company involved. If there is to be a joint undertaking, that fact should be clearly stated. In advertising, quoting rates, estimating charges or making other representations to shippers, the carriers should be required to describe their activities so that the identity of the particular carrier or carriers engaged therein is clearly disclosed. If two or more affiliates provide service between the same points that circumstance together with any differences in the character of the service or in the rates should be explained.

The foregoing requirements should be adopted in the interest of establishing reasonable and proper practices in connection with these phases of the so-called "dual operations."

Another practice dealt with in the report is that of high-way common carriers holding extensive operating rights engaging local radial carriers to represent them in various localities. It points out that in such cases, as in the case of the concerns of common ownership and management, both carriers ordinarily hold operative rights to perform either the complete service or some portion of it and the shipper is given little opportunity to ascertain what rates and service are available to him. Instances where the radial

carrier has charged for services included in the common carrier's through rate are cited in the report. The records of transactions of this type are obscured by the practice of billing any charges claimed by the radial carrier as a lump sum for collection in addition to the common carrier's charges.

In regard to the unauthorized assessing of additional charges for radial carrier service included in the common carrier's rates, the examiner recommended similar action to that taken with respect to dual operations of the same carrier, namely the ordering of the discontinuing of such practices and the adjusting of charges to the basis of the tariff rates on past shipments. The examiner further recommended that in the future any charges of radial carriers billed in connection with a highway common carrier movement be required to be itemized in the highway common carrier's freight bill. Respondents have suggested that it is enough to require that the carrier for which the collection is made furnish the collecting carrier with a detailed statement of its charges for presentation to the consignee by the delivering carrier. As so modified the examiner's proposals with respect to charges for radial carrier service in connection with highway common carrier operations appear appropriate and should be adopted.

As hereinbefore indicated radial carriers acting as agents of highway common carriers fail to inform shippers of any differences in service and rates in the radial and common carrier operations or in a combination thereof. This is inconsistent with their obligations as for-hire carriers. In their dealings with the public the radial carrier agents should be required to adhere to practices similar to those found reasonable and proper in connection with "dual operations" of affiliates of common ownership and management. It is equally important to see that agency arrangements are not used as means of conducting two operations under the pretense of a single one.

Other Practices

The proposed report also deals with the practices of the carriers concerning the weights used in determining charges for "long distance moving." It points out that, although charges for this type of service are required to be based on weight, "flat charges" (charges on a per-shipment basis) have been observed without obtaining the weight of the shipment; that arbitrary weights described as "minimum" weights but exceeding the prescribed minimum weights have been used in other cases; that in still other cases various charges ranging from 25 cents to \$1.00 have been collected as "weighing charges"; and that bridge tolls have been collected in addition to transportation rates.

As pointed out by the examiner failure to determine actual weights for "long distance moving" shipments violates outstanding orders of the Commission. Respondents will be expected to ascertain weights for all such shipments. In regard to the use of weights exceeding the actual and established minimum weights, the basis of charges will be required to be set forth in the confirmation of shipping instructions and rate quotation document hereinbefore discussed in connection with rate quoting and estimating practices. The cost of securing weights and the expense of bridge tolls, expenses considered in determining the level of "long distance moving" weight rates, are not, as such, proper charges against shippers and the practice of billing shippers for these costs should be discontinued.

Other practices condemned in the report are the additional charges made for pianos, refrigerators and stoves, and the collection from shippers of the 3 per cent tax imposed by the State upon the carriers' gross receipts, except the receipts from operations wholly within or between incorporated cities. In regard to the first of these practices, respondents asked that no action be taken until certain studies were completed and submitted to the

Commission. This has been done and the question will, therefore, be disposed of in a decision issued on that record.

With respect to the 3 per cent "State", "Board of Equalization" or "Road" tax, respondents argue that there are no provisions of law prohibiting them from collecting this tax from their customers and that the recommendation exceeds the Commission's power and jurisdiction. If the collections condemned by the examiner are inappropriate, they contend, the tax laws should be changed or methods of collection prescribed by the administrative agency involved.

It seems apparent that the practice of collecting from shippers a 3 per cent charge represented as a State tax is followed solely to give the impression that the tax is imposed upon shippers as is the case in current federal taxes on passenger and freight transportation. If this is not the purpose, the same result would be obtained by raising the transportation rate by 3 per cent and assessing the rate as so increased. This is a further, and perhaps the most clear, indication that at best the carriers make little effort fully to inform the shippers of the bases of their charges. Indeed, in this and other respects, the intention of the carriers appears to be to obscure rather than clarify the terms of any agreement with respect to charges. The practice of collecting the 3 per cent gross receipts tax paid to the State through the Board of Equalization from shippers as a tax is an unreasonable one and should be prohibited.

Highway Common Carrier Deviations from Tariff Bases

Commenting on the numerous instances of inadequate and incorrect billing of charges by highway common carriers and on the overcharges by such carriers disclosed by the record, the examiner concluded that the showing was strongly indicative that the carriers

were not properly discharging their obligations to see that their filed tariffs are adhered to. He recommended that they be required to review their billing and report the rate errors disclosed by this review and the progress made in effecting necessary adjustments.

On exception, respondents stated that it was the purpose of the highway common carriers to see that their tariff rates were observed and to refund overcharges and that administrative steps were being taken to that end. Respondents are admonished that their billing practices must be such that the charges assessed and collected will be those provided for under their applicable tariffs.

Practices and Maximum Rates

The conclusions hereinbefore reached concern the maximum rate question only to the extent that it is involved in requiring radial, contract and city carriers to make definite commitments with respect to rates and charges in advance of shipment and in prohibiting the subsequent observance of higher rates and charges. The carrier practices which have required that such action be taken have been fully discussed. It is necessary to invoke the Commission's maximum rate authority to see that the carriers fulfill their commitments. Rates and charges which exceed those agreed to in advance of shipment by radial, contract and city carriers are to that extent unreasonable and excessive, except where the agreement calls for rates lower than the established minimum rates. In other respects the fixing of maximum rates has not been shown to be necessary or desirable.

General Conclusions

It is strikingly plain from the record adduced in these proceedings that, on the whole, respondents have made no studied

effort to deal openly and frankly with shippers. It is evident that many shippers have had little or no realization of the nature of the agreements between them and the carriers. Respondents' obligation to inform shippers of what they will undertake to do and the rates they propose to charge has repeatedly been evaded. It is conceded that there have been instances of carriers being careless and even fraudulent in their dealings with shippers. The arrangements between carriers and shippers will be definitely established under the practices required to be followed as a result of the order herein and the opportunity for careless and fraudulent dealings with shippers will be minimized.

Findings

Upon consideration of all the facts and circumstances of record we are of the opinion and find:

1. That respondents should be required to issue a written confirmation of shipping instructions and rate quotation for each shipment tendered for transportation which shall describe the transportation and accessorial services to be undertaken; quote rates (including minimum weights, minimum hours, other minimum units of measurement, or minimum charges, when they are to be applied) for the services so described; specify the agreed or declared valuation on which the quoted rates are based and to which carrier liability is to be limited; point out, immediately following the treatment of valuation and liability, that protection against loss or damage exceeding carrier liability may be secured, if desired, by obtaining insurance coverage and state that the carrier does not handle insurance or, in the case of carriers arranging for insurance coverage, indicate the type of insurance ordered or that an order for insurance has not been placed with the carrier;

2. That respondents should be required to incorporate in all documents issued pursuant to the requirements of Finding 1 hereof, immediately following the rate quotation and in a conspicuous manner, statements directing attention to the fact that the quoted rates are to be applied on the basis of the actual number of hours, actual weight, or actual number of other units of measurement; that the rates (including minimum weights or other minimum provisions) specified therein superseded any previous rate quotations, estimates or representations concerning the charges to be assessed; that, when the aforesaid documents are issued by radial highway common, highway contract or city carriers, minimum rates prescribed by the Commission and set forth in its City Carriers' Tariff No. 3 - Highway Carriers' Tariff No. 4 must be applied in the event the rates named in that tariff are higher than the quoted rates; that, when the aforesaid documents are issued by highway common carriers, the applicable rates are those named in the carrier's tariff, notwithstanding any different rate quotation, estimate or representation; and that the tariffs issued by the Commission and the carriers are open for public inspection at the Commission's offices and at the carriers' offices;

3. That, in connection with "long distance moving," as described in Item No. 10(b) of City Carriers' Tariff No. 3 - Highway Carriers' Tariff No. 4 (Appendix "A" to Decision No. 32629 of December 7, 1939, as amended, in Cases Nos. 4246 and 4434), respondents should be required to request shippers for notification addresses; that the documents

for such operations issued pursuant to the requirements of Findings 1 and 2 hereof should be required to contain the notification addresses supplied by shippers, or to indicate that they were requested and the shippers elected not to furnish them, to describe the arrangements under which notification is to be given and delivery made, and to call attention, immediately following the description of these arrangements, to additional charges for storage and extra handling and transportation which will accrue should the goods not be received by the consignee in accordance with the arrangements so described;

4. That respondents should be required to prepare all documents issued pursuant to the requirements of Findings 1, 2 and 3 hereof in duplicate, to present them to shippers prior to the rendition of any service involved, to sign and secure the shippers' signatures before commencing to perform service, to deliver the signed originals to the shippers prior to or at the time service is begun, to issue revised or supplemental documents when additional service is requested or shipping instructions are changed by the shipper, and to retain and preserve the copies of all such documents for reference and subject to the Commission's inspection for a period of not less than three (3) years from their issuance;

5. That respondent radial highway common, highway contract and city carriers should be required to observe rates and charges not higher than those specified in the confirmation of shipping instructions and rate quotation documents issued pursuant to the requirements of Findings 1, 2, 3 and 4 hereof, except where charges determined on the quoted basis are lower than those produced by the applicable minimum rates, in which event the minimum rate basis should be required to be used; and to effect delivery of "long distance moving" shipments without additional charge for storage and extra handling or transportation when the carriers fail to fulfill their

obligations by carrying out specified notification and delivery arrangements;

6. That the forms of confirmation of shipping instructions and rate quotation set forth in Appendix "A" hereof will be suitable and proper;

7. That rates and charges higher than those determined in accordance with the requirements of Finding 5 hereof are excessive and unreasonable and that respondents radial highway common, highway contract and city carriers should be required to cease and desist from observing such higher charges;

8. That five (5) per cent of transportation charges is the reasonable maximum commission to be paid by respondents to persons or corporations that are not operating as for-hire carriers of used household goods and related articles, as described in and for which rates are provided in City Carriers' Tariff No. 3 - Highway Carriers' Tariff No. 4;

9. That, when one respondent undertakes to make collection of charges for another, the carrier for which the collection is made shall furnish the collecting carrier with a detailed statement of the charges involved and the collecting carrier shall present this statement with the freight bill submitted for payment;

10. That aggregate charges which include charges indicated as being for the 3 per cent gross receipts tax to be paid to the State through the Board of Equalization and aggregate charges in connection with "long distance moving" which include charges indicated as being for weighing consignments, or for bridge tolls, are excessive and unreasonable to the extent of the charges so indicated; and that respondents should be required to discontinue the practice of assessing such charges;

11. That, where highway common carriers are affiliated with radial highway common carriers and where highway common carriers engage radial highway common carriers as agents or representatives, each such carrier should be required to operate as a separate entity; to collect and report in full all revenues from one-carrier transactions; to divide equitably all revenues from joint undertakings on an individual shipment basis; to bear all of the expenses directly chargeable to one-carrier transaction; to allocate other expenses with due regard to the time spent by personnel employed by, and expenses for equipment and facilities operated by, two or more carriers; and to share equitably other common expenses; to refrain from making over-all or blanket settlements of revenues and expenses; to engage in joint undertakings when all of the services desired are offered to the public by one or more of such carriers only upon the shipper's specific request; to explain to all inquirers, when two or more such carriers provide service between the same points, what services are available and any differences in the character of the service and in the rates therefor; to issue all documents and keep all records on a strictly individual carrier basis; and, in these and all other respects, to conduct their carrier affairs so that there will be no doubt of which carrier is involved in one-carrier transactions and the nature and extent of individual carrier participation in joint undertakings;

12. That Findings 1 to 11 inclusive hereof outline reasonable and proper practices for respondents and that practices incompatible with those found reasonable and proper herein should be required to be discontinued;

13. That Decision No. 32629 of December 7, 1939, as amended, in Cases Nos. 4246 and 4434, should be further amended to the extent provided for in Findings 1 to 12, inclusive, hereof; and

14. That respondent highway common carriers which have assessed higher charges than those produced by the provisions of the applicable tariffs on file with the Commission and in effect at the time of shipment in connection with transportation and accessorial services purportedly performed under radial highway common carrier permits but within the scope of their highway common carrier operating authority and in connection with transportation and accessorial services performed by radial highway common carriers acting as agents for highway common carriers should be required to refund the overcharges involved within the statutory period for such refunds and to furnish the Commission with a statement of all such shipments, the basis of the adjustments required to bring the charges into conformity with tariff provisions, and when the refunds were accomplished or why they cannot be effected.

O R D E R

Based upon the evidence of record and upon the conclusions and findings set forth in the preceding opinion,

IT IS HEREBY ORDERED that, for the transportation of used household goods and used office and store fixtures and equipment, as described in and for which rates are provided in City Carriers' Tariff No. 3 - Highway Carriers' Tariff No. 4 (Appendix "A" to Decision No. 32629 of December 7, 1939, as amended, in Cases Nos. 4246 and 4434), the requirements set forth in Findings 1 to 12, inclusive, of the opinion which precedes this order be and they are hereby established, effective forty-five (45) days after the effective date of this order, as reasonable and proper practices to be observed by all highway common, radial highway common, highway contract and city carriers; and that all said carriers be and they are hereby ordered

and directed to cease and desist forty-five (45) days after the effective date of this order and thereafter abstain from observing practices incompatible with those herein established as reasonable and proper.

IT IS HEREBY FURTHER ORDERED that, in connection with transportation described in the preceding ordering paragraph hereof, respondent radial highway common, highway contract and city carriers be and they are hereby ordered and directed to cease and desist forty-five (45) days after the effective date of this order and thereafter abstain from assessing, charging or collecting rates or charges higher than those determined in accordance with the provisions of Finding 5 of the opinion which precedes this order.

IT IS HEREBY FURTHER ORDERED that, Decision No. 32629 of December 7, 1939, as amended, in Cases Nos. 4246 and 4434, be and it is hereby further amended to the extent provided for in the preceding ordering paragraphs hereof, and that as so amended said Decision No. 32629 shall remain in full force and effect.

IT IS HEREBY FURTHER ORDERED that respondent highway common carriers engaged in the transportation of the property described in the first ordering paragraph hereof be and they are hereby ordered and directed to file, not later than forty-five (45) days from the effective date of this order, written statements listing all shipments purported to have been handled under radial highway common carrier permits but within the scope of their highway common carrier operating authority and by radial highway common carriers acting as agents for highway common carriers on which charges higher than those produced by applying the rates and other provisions of tariffs on file with the Commission and in effect at the time of shipment and

within the statutory period for the refunding of overcharges and showing the basis of the adjustments required to bring the charges into conformity with the applicable tariffs and when the refunds were accomplished or why they cannot be effected.

The effective date of this order shall be thirty (30) days from the date hereof.

Dated at San Francisco, California, this 4th day of November, 1946.

Harold J. Hills
Justin F. Casman
Thomas J. Quinn
Samuel Powell
A. J. Zimmerman
Commissioners

APPENDIX "A" TO DECISION NO. 30643
IN CASES NOS. 4246, 4434 AND 4730

(a) Suitable and proper form for use in connection with "Local Moving" operations of highway common carriers.

CONFIRMATION OF SHIPPING INSTRUCTIONS
AND RATE QUOTATION

(Name of carrier which shall be the name in which the operating authority is held).

(Serial number of document)

(The shipper is requested to read this document carefully before signing it and to ask for an explanation of anything which is not clear or is inconsistent with any previous representation made by the carrier).

(Place document is issued)

(Date issued)

This will confirm instructions received from (name the person placing instructions) to transport a consignment of (used household goods or other suitable description) from (describe the location from which the goods are to be shipped) to (describe the location at which the goods are to be delivered), to receive the consignment for transportation on (specify the date and time or other arrangement), and to perform the accessorial services of (specify any services such as packing, crating, unpacking or uncrating or indicate that none are involved) in connection with the receipt, transportation or delivery of the consignment.

The rate(s) for the above described services as named in the applicable tariff, (designate the tariff), is (are) (name the rate or rates, including minimum charges and any other minimum provisions involved, for transportation and accessorial services ordered, designating the particular services for which different rates or minimum provisions are quoted and specifying the size of the equipment to be furnished, the number of men to be employed or such other conditions and circumstances under which the named rate or rates will be applicable, and enumerating conditions and circumstances which may result in extra charges, such as the requesting of helpers not covered by the foregoing arrangements, the ordering of additional service or failure to accept delivery.)

IMPORTANT NOTICES

The furnishing of the above described transportation and accessorial services is to be undertaken under highway common carrier operative rights. Section 17(a) 2 of the Public Utilities Act requires that highway common carriers observe the rates and charges provided for in their applicable tariffs on file with the California Railroad Commission. The rates and charges herein quoted are believed to be in strict conformity with those specified in the tariff applicable to the consignment involved. Should it develop that the quoted rates and

charges have been incorrectly determined, the tariff rates and charges, whether higher or lower than those quoted, must be used as the basis for assessing and collecting charges. The quotation of rates and charges herein made supersedes any different quotation, estimate or representation previously made. The basis of charges provided by the applicable tariff controls determination of the charges to be assessed and collected, notwithstanding any rate quotation, estimate of charges or other representation. The actual weight, the number of hours involved in providing service or the actual number of other units of measurement, subject to applicable minimum provisions, not any estimate or representation of the carrier, will be used in determining charges. Copies of the tariff referred to in the rate quotation made herein and all other highway common carrier tariffs of this company covering transportation between California points are on file at, and open for public inspection at, the California Railroad Commission's offices in the State Buildings in San Francisco and Los Angeles and at (the carrier's office or offices - designate their location.)

The rates quoted herein, including minimum charge or other minimum provisions, are based upon an agreed or declared value being stated by the shipper which is not in excess of _____ cents per pound, per article, and carrier liability is limited accordingly. Protection against loss or damage exceeding carrier liability may be secured, if desired, by obtaining insurance coverage. (if the carrier does not handle insurance state that fact; if it does describe the type and amount of insurance ordered through the carrier to cover the consignment or state that no insurance has been ordered through the carrier).

(Name of Carrier)

By (Show name in full)

(Shipper's name)

(Signature of Shipper or Agent of Shipper)

(Address of Shipper or Agent of Shipper)

(Date)

(b) Suitable and proper form for use in connection with "Long Distance Moving" of highway common carriers.

CONFIRMATION OF SHIPPING INSTRUCTIONS
AND RATE QUOTATION

(Name of Carrier which shall be the name in which the operating authority is held) _____

(Serial number of document) _____

(The shipper is requested to read this document carefully before signing it and to ask for an explanation of anything which is not clear or is inconsistent with any previous representation made by the carrier).

(Place document is issued) _____

(Date issued) _____

This will confirm instructions received from (name the person placing instructions) to transport a consignment of (used household goods or other suitable description) from (describe the location from which the goods are to be shipped) to (describe the location at which the goods are to be delivered), to receive the consignment for transportation on (specify the date and time or other arrangement), to perform the accessorial services of (specify any services such as packing, crating, unpacking or uncrating or indicate that none are involved) in connection with the receipt, transportation or delivery of the consignment, to notify (name the party to be notified) at (location where notification is to be made) by (describe the type of notification, when and how it is to be made and when and how delivery is to be accomplished thereafter, or show that the shipper was requested to supply a notification address but declined to do so, and such arrangements as have been made respecting delivery).

The rate(s) for the above described services as named in the applicable tariff, (designate the tariff), is (are) (name the rate or rates, including minimum weights, minimum charges, and any other minimum provisions involved for transportation and accessorial services ordered, designating the particular services for which different rates or minimum provisions are quoted and conditions and circumstances which may result in extra charges, such as pickup or delivery at other than ground floor, the ordering of additional service or failure to accept delivery pursuant to the delivery arrangements above described).

IMPORTANT NOTICES

The furnishing of the above described transportation and accessorial services is to be undertaken under highway common carrier operative rights. Section 17(a)2 of the Public Utilities Act requires that highway common carriers observe the rates and charges provided for in their applicable tariffs on file with the California Railroad Commission. The rates and charges herein quoted are believed to be in strict conformity with those specified in the tariff applicable to the consignment involved. Should it develop that the quoted rates and charges have been incorrectly determined, the tariff rates and charges, whether higher or lower than those quoted, must be used as the basis for assessing and collecting charges. The quotation of rates and charges herein made supersedes any different quotation, estimate or representation previously made. The basis of charges provided by the applicable tariff controls determination of the charges to be assessed and collected, notwithstanding any rate quotation, estimate of charges or other representation. The actual weight, the number of hours involved in providing service or the actual number of other units of measurement, subject to applicable minimum provisions, not any estimate or representation of the carrier, will be used in determining charges. Copies of the tariff referred to in the rate quotation made herein and all other highway common carrier tariffs of this company covering transportation between California points are on file at, and open for public inspection at, the California Railroad Commission's offices in the State Buildings in San Francisco and Los Angeles and at (the carrier's office or offices - designate their location.)

The rates quoted herein, including minimum weight, minimum charge or other minimum provisions, are based upon an agreed or declared value being stated by the shipper which is not in excess of _____ cents per pound, per article, and carrier liability is limited

accordingly. Protection against loss or damage exceeding carrier liability may be secured, if desired, by obtaining insurance coverage. (if the carrier does not handle insurance state that fact; if it does, describe the type and amount of insurance ordered through the carrier to cover the consignment or state that no insurance has been ordered through the carrier).

(Name of Carrier) _____

By (Show name in full) _____

(Shipper's name) _____

(Signature of Shipper or Agent of Shipper) _____

(Address of Shipper or Agent of Shipper) _____

(Date) _____

(c) Suitable and proper form for use in connection with "Local Moving" operations of radial highway common, highway contract and city carriers.

CONFIRMATION OF SHIPPING INSTRUCTIONS AND RATE QUOTATION

(Name of carrier which shall be the name in which the operating authority is held). _____

(Serial number of document) _____

(The shipper is requested to read this document carefully before signing it and to ask for an explanation of anything which is not clear or is inconsistent with any previous representation made by the carrier).

(Place document is issued) _____

(Date issued) _____

This will confirm instructions received from (name the person placing instructions) to transport a consignment of (used household goods or other suitable description) from (describe the location from which the goods are to be shipped) to (describe the location at which the goods are to be delivered), to receive the consignment for transportation on (specify the date and time or other arrangement), and to perform the accessorial services of (specify any services such as packing, crating, unpacking or uncrating or indicate that none are involved) in connection with the receipt, transportation or delivery of the consignment.

The rate(s) for the above described services is (are) (name the rate or rates, including minimum charges and any other minimum provisions involved, for transportation and accessorial services ordered, designating the particular services for which different rates or minimum provisions are quoted and specifying the size of the equipment to be furnished, the number of men to be employed or such other conditions and circumstances under which the named rate or rates will be applicable, and enumerating conditions and circumstances which may result in extra charges, such as the requesting of helpers not covered by the foregoing arrangements, the ordering of additional service or failure to accept delivery.) _____

IMPORTANT NOTICES

Charges under the rates quoted herein will be determined on the basis of the actual weight, the number of hours involved in providing service or the actual number of other units of measurement, subject to designated minimum provisions, notwithstanding any previous quotation, estimate or representation to the contrary. The rates herein quoted, including minimum charge or other minimum provisions, supersede any previous understanding with respect to rates and charges. They are believed to be not lower than the minimum rates prescribed by the California Railroad Commission and promulgated in its City Carriers' Tariff No. 3 - Highway Carriers' Tariff No. 4, and will be applied unless in conflict with the rates or other minimum provisions of that tariff. The Commission's tariff must be applied as the minimum basis. Copies of it are open for public inspection at the Commission's offices in the State Buildings at San Francisco and Los Angeles and at (the carrier's office or offices - designate their location).

The rates quoted herein, including minimum charges or other minimum provisions, are based upon an agreed or declared value being stated by the shipper which is not in excess of _____ cents per pound, per article, and carrier liability is limited accordingly. Protection against loss or damage exceeding carrier liability may be secured, if desired, by obtaining insurance coverage. (if the carrier does not handle insurance state that fact; if it does, describe the type and amount of insurance ordered through the carrier to cover the consignment or state that no insurance has been ordered through the carrier).

(Name of Carrier)

By (Show name in full)

(Shipper's name)

(Signature of Shipper or Agent of Shipper)

(Address of Shipper or Agent of Shipper)

(Date)

(d) Suitable and proper form for use in connection with "Long Distance Moving" operations of radial highway common and highway contract carriers.

CONFIRMATION OF SHIPPING INSTRUCTIONS
AND RATE QUOTATION

(Name of Carrier which shall be the name in which the operating authority is held).

(Serial number of document)

(The shipper is requested to read this document carefully before signing it and to ask for an explanation of anything which is not clear or is inconsistent with any previous representation made by the carrier).

(Place document is issued)

(Date issued)

This will confirm instructions received from (name of the person placing instructions) to transport a consignment of (used household goods or other suitable description) from (describe the location from which the goods are to be shipped) to (describe the location at which the goods are to be delivered), to receive the consignment for transportation on (specify the date and time or other arrangement) to perform the accessorial services of (specify any services such as packing, crating, unpacking or uncrating or indicate that none are involved) in connection with the receipt, transportation or delivery of the consignment, to notify (name the party to be notified) at (location where notification is to be made) by (describe the type of notification, when and how it is to be made and when and how delivery is to be accomplished thereafter, or show that the shipper was requested to supply a notification address but declined to do so, and such arrangements as have been made respecting delivery).

The rate(s) for the above described services is (are) (name the rate or rates, including minimum weights, minimum charges, and any other minimum provisions involved for transportation and accessorial services ordered, designating the particular services for which different rates or minimum provisions are quoted and conditions and circumstances which may result in extra charges, such as pickup or delivery at other than ground floor, the ordering of additional service or failure to accept delivery pursuant to the delivery arrangements above described).

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The rates quoted herein, including minimum weight, minimum charge or other minimum provisions, are based upon an agreed or declared value being stated by the shipper which is not in excess of _____ cents per pound, per article, and carrier liability is limited accordingly. Protection against loss or damage exceeding carrier liability may be secured, if desired, by obtaining insurance coverage. (if the carrier does not handle insurance state that fact; if it does describe the type and amount of insurance ordered through the carrier to cover the consignment or state that no insurance has been ordered through the carrier).

(Name of Carrier)

By (Show name in full)

(Shipper's name)

(Signature of Shipper or Agent of Shipper)

(Address of Shipper or Agent of Shipper)

(Date)

END OF APPENDIX