

ORIGINALDecision No. 70913

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation into the rates, rules, regulations, charges, allowances and practices of all common carriers, highway carriers and city carriers relating to the transportation of any and all commodities between and within all points and places in the State of California (including, but not limited to, transportation for which rates are provided in Minimum Rate Tariff No. 2).

Case No. 5432
Petition for Modification
No. 261

In the Matter of the Investigation into the rates, rules, regulations, charges, allowances and practices of all common carriers, highway carriers and city carriers relating to the transportation of property in Los Angeles and Orange Counties (transportation for which rates are provided in Minimum Rate Tariff No. 5).

Case No. 5435
Petition for Modification
No. 36

In the Matter of the Investigation into the rates, rules, regulations, charges, allowances and practices of all common carriers, highway carriers and city carriers relating to the transportation of property within San Diego County (including transportation for which rates are provided in Minimum Rate Tariff No. 9-A).

Case No. 5439
Petition for Modification
No. 27

Phil Jacobson, ^{1/} for House Moving Contractors Association, original petitioner.
(For other appearances see Decision No. 68359)

DECISION ON REHEARING

By Decision No. 68359, dated December 15, 1964, in the above-designated proceedings, the Commission established minimum rates and rules for the transportation of houses and other buildings

^{1/} Inadvertently omitted from list of appearances in Decision No. 68359.

between points within a defined area comprising generally the so-called Los Angeles Basin, also from points in said area to points in San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Riverside, San Bernardino and Imperial Counties. Said rates and rules, which are set forth in Minimum Rate Tariff No. 16 (MRT No. 16), were prescribed to govern transportation via radial highway common carriers, highway contract carriers and city carriers.^{2/} The tariff provisions in question were established pursuant to petitions, as amended, filed by House Moving Contractors Association of California (Association), an organization of for-hire carriers which are engaged in the moving of houses and other structures between points in Southern California.

The provisions of MRT No. 16 were published to take effect on January 23, 1965. However, on December 31, 1964, United House Sales (United), a protestant in the original hearings, filed a petition for rehearing. Subsequently the Commission issued its orders as follows: on January 5, 1965, staying the effective date of the aforesaid decisions until further order; on February 10, 1965, issuing suspension supplements to the affected tariffs; and on March 17, 1965, granting rehearing of the matters at issue.

Rehearing was held before Examiner Bishop at Los Angeles on May 20 and 21 and on June 15 and 16, 1965. With the filing of an exhibit on June 17, 1965 the matters were resubmitted.

^{2/} The issuance of MRT No. 16 also involved certain concurrent modifications in Minimum Rate Tariffs Nos. 2, 4-B and 5. These amendments were accomplished by Decisions Nos. 68361, 68360 and 68362, respectively. Also, the aforesaid Decision No. 68359 dismissed Petition No. 27 in Case No. 5439, since, at the hearings, petitioner's request for the establishment of minimum rates and rules on houses transported from, to or between, points in San Diego County was withdrawn.

Counsel for United introduced evidence through the president of a firm engaged in the buying and selling of houses^{3/} and through a representative of the Department of Public Works of the City of Los Angeles. Said counsel also made extended argument in support of United's position. Association offered rebuttal evidence through the tariff expert who testified in its behalf in the original hearings. Representatives of California Trucking Association and of the Commission's Transportation Division staff assisted in the development of the record through examination of the witnesses. All the parties hereinbefore mentioned participated in closing argument.

In its petition for rehearing United set forth 15 allegations. They may be summarized as follows: (1) The Commission has discretion not to regulate the charges of for-hire carriers when facts and circumstances justify nonregulation; the Commission has abused its discretion in prescribing the minimum rates here in issue; (2) Under the guise of "accessorial charges", the Commission has undertaken to regulate the charges of house movers which are actually those of licensed contractors; (3) The Commission has, by its order, undertaken to eliminate competition in what is primarily a contracting field, resulting in interference with matters which are delegated to, and preempted by, the Contractors' State License Board; (4) The Commission, by its order, has acted in violation of the anti-trust policy of the State of California and of the United States, which prohibits conspiracy to fix prices and eliminate competition; (5) The following statements

^{3/} According to the record the company in question also has a contractor's license as a house mover but does not possess any highway or city carrier operating authority from this Commission.

in the decision in question are not supported by the evidence: (a) that with the lessening of demand for their services, house movers have had to reduce their rates and charges for moving, so that, according to the movers, their rates are below cost, necessitating the establishment of minimum rates; (b) that moving of houses is a "transportation" service (assertedly, the record shows that it is a "contractor's service", rendered by house movers as licensed contractors); (c) that the cost of house movers' equipment was determined from carriers' books and invoices (assertedly, the carriers' records are insufficient or inaccurate); (d) that service lives were obtained from schedules of the Bureau of Internal Revenue or in accordance with rate of replacement reflected by carriers' records (assertedly, said records are insufficient or inaccurate); (6) The following findings in said decision are not sustained by the evidence: (a) that house movers have shown sufficient cause for establishment of minimum rates and that such rates should be established; (b) that such rates should be established on an hourly basis; (c) that the rates and regulations provided in MRT No. 16 will be just, reasonable and non-discriminatory rates and rules for the transportation in question and that the various classes of carriers involved should be required to observe rates no lower in volume or effect than those provided in said tariff; (7) While the Commission found that operating costs of house movers were overstated in Association's presentation, and made adjustments for such infirmities in determining the prescribed hourly rate, said adjustments were not sufficient, so that the prescribed rate is excessive and not a reasonable rate; (8) The prescribed allowance of two hours' travel time per man per shipment, when applied to the moving of a detached

garage, is confiscatory and unreasonable; (9) The Commission, having recognized the uniqueness of house moving as compared with transportation of general commodities, should have refused to regulate the moving and relocation of houses.

In support of some of the foregoing allegations United relied on the record of the original hearings; other allegations it sought to justify by additional evidence or argument, or by both.

Question of Commission's
Jurisdiction and Exercise Thereof

MRT No. 16 (now under suspension, as hereinbefore stated) provides hourly rates for the transportation of houses and other buildings.^{4/} By the definition of "transportation", Item No. 11 of the tariff provides that said rates include all services performed by the carrier (except advancing charges) in connection with a shipment, both prior to, and after actual movement of the shipment from point of origin to point of destination or site. Thus, the rates include, at origin, such services as severing the house from its foundation, placing a cradle of timbers or steel beams under it, raising it, and placing it on the dollies on which it is to be transported. At destination the rates include other services such as positioning the house (or sections thereof, if cut into sections), lowering it to its new foundation and removing the cradle and dollies.

United concedes that the actual moving of houses is transportation within the purview of the Highway Carriers' and

^{4/} Item No. 300 of the tariff names the following basic hourly rates:

For work done on days other than Saturdays, Sundays or holidays:	
6 a.m. to 6 p.m.	\$10.35
6 p.m. to 6 a.m.	12.25
For work done on Saturday	12.25
For work done on Sunday or a holiday	14.20

City Carriers' Acts (Chapters 1 and 2, respectively, of Division 2 of the Public Utilities Code) but takes the position that the services which the carrier renders before and after said movement are those of a house moving and house wrecking contractor, for which a specialty contractor's permit must, under certain provisions of the Business and Professions Code, be obtained from the Contractors' State License Board. This view is supported, counsel for United urged, by the fact that the movers sign wage agreements as members of the Associated General Contractors of America (AGC). Accordingly, United contends that the jurisdiction of this Commission does not extend to those services which the mover renders prior and subsequent to the actual movement of the building from origin to destination. Said counsel further argued that to construe said services as a part of, or accessorial to the transportation involved would result in a conflict in jurisdictions of the aforesaid Board and this Commission.

Predicated on the foregoing premise, United contends that the Commission is without authority to establish minimum rates to govern the aforesaid prior and subsequent services. United urges further that since the time involved in the actual transportation of the building from the old to the new resting place is only a relatively small part of the total time consumed in the house moving operation, the Commission should not establish minimum rates for such transportation. It points out that while the Commission is empowered to establish minimum rates for highway and city carriers it has, in many instances, and under various circumstances, refrained from doing so.

In support of its statement that the actual movement of a building entails only a small portion of the time consumed,

United introduced evidence through the aforesaid president of a firm engaged in the buying and selling of houses. This company, he said, buys and sells, and arranges for the moving of, about 240 houses per year. He introduced figures showing the total hours consumed and the estimated hours involved in the actual transportation of eleven houses which his company had bought, sold and contracted to have moved during the period from October 1963 to October 1964. In only one instance did the estimated time of actual movement amount to as much as 40 percent of the total time involved. In the other ten instances the estimate ranged from 8 percent to 30 percent.

The evidence shows that movers have accurate records of the total time consumed in each moving job, including the preliminary and subsequent services, but they usually do not have a breakdown showing the time consumed in the actual transportation of the house. In one of the instances here cited the witness actually observed the move, and had an accurate record of the actual movement time. The times involved in the actual transportation of the other ten buildings were estimated jointly by the witness and an officer of the company which moved the buildings. The estimates were predicated on the broad experience of both parties in the moving of houses.^{5/} The following ranges were given in connection with the aforesaid eleven jobs: distances, from 3 to 100 miles; total job time, 132 to 400 hours; actual moving time 32 to 100 hours. The witness considered the eleven jobs in question to be representative of the general experience in house moving operations.

^{5/} The record shows that this witness, while not presently engaged in the house moving business, has had many years of experience in that field.

In further support of the foregoing point, counsel for United directed attention to Ruling 1420 of the State Board of Equalization, relating to the transportation tax collected by the latter under the provisions of Section 9603 of the Revenue and Taxation Code. The ruling provides, in part, that the tax applies to the gross receipts from the transportation or moving of houses, buildings or other structures over the public highways by or upon motor vehicles. The ruling further provides that if a single charge is made for the removal of a structure from its foundation, the moving of the structure and the placing of same on a foundation at the place of delivery, the tax applies to that portion of the charge fairly attributable to the moving of the structure. Said counsel drew attention to the practice of the Board of Equalization, as the record in the original hearing shows, of considering 25 percent of said revenues as subject to the tax and 75 percent as exempt from the tax, where a single charge is made for the entire operation.

The aforesaid rule and practice of the Board of Equalization were cited by United's counsel in support of its contention that the prior and subsequent services are not transportation and therefore are not subject to regulation by this Commission. Predicated on the above-described testimony and transportation tax rule, which were adduced to show that in the moving of houses and other buildings transportation comprises less than half of the service time and is responsible for less than half the operating costs and revenues involved, United takes the position that the Commission should not exercise its power to establish minimum rates

for that portion of the moving operation which United concedes is transportation.^{6/}

An additional reason advanced by United for not establishing minimum rates is the competitive situation which is said to exist between the house movers and the house brokers. The aforesaid witness for United testified that many of the house movers also engage in the buying and selling of houses; that a mover will buy a house at point of origin, then sell it on a delivered basis, and that the mover need not charge himself a minimum rate, since the house is his property until he delivers it at the agreed point of destination. This, the witness testified, places the broker at a disadvantage, because he would be required to pay charges based on the minimum rate and take such into account in setting the sale price of the house.

In this connection testimony of movers in the original record confirms the fact that some house movers do engage in the buying and selling of houses. One mover went so far as to testify that the house movers were operating at a loss and that the only way to continue in business was to buy and sell houses. An exhibit of record discloses that most of the members of Association are listed in the classified (yellow) section of the Los Angeles telephone directory both as house movers and house buyers. The

^{6/} Counsel cited three California Supreme Court decisions in support of United's above-stated views, namely: Commercial Communications v. Public Utilities Commission (50 Cal. 2nd 512); Richfield Oil Corp. v. Public Utilities Commission (54 Cal. 2nd 419); and Bekins Van Lines v. Johnson (21 Cal. 2nd 135). He relies on a dissenting opinion in the first cited case. The circumstances involved in the first and second cited cases are such that they are not in point. The decision in the third cited case appears to have been misconstrued, as it does not support United's position.

same exhibit shows, also, that the advertisement of United in the same directory section, while listed only under the caption of house buyers, reads as follows: "Houses and multiples bought -- sold -- moved" (emphasis supplied).

One of the principal factors in the plea of the movers for the establishment of minimum rates was the increasing competition among the movers for the available business, a circumstance charged to the alleged decrease in the number of houses to be moved. This latter condition was said to be due to the completion of the major part of the Southern California freeway construction program. United contended in its petition for rehearing that these allegations were not correct. In the rehearing, evidence was introduced by Association which indicates that there still remains a substantial amount of freeway construction to be completed in the area, as defined in Item No. 200 of MRT No. 16, within which house movements subject to the rates in said tariff would originate. Said evidence further indicates that for several years there will be many houses to be moved in the area in question as a consequence of the freeway construction program.

The representative from the Commission's Transportation Division staff who participated in the rehearing took the position that the designation by the Board of Equalization of 25 percent of the movers' revenues as the amount on which transportation tax is to be collected is not significant. He pointed out that there are other instances in which said tax is not assessed in connection with operations which are clearly "transportation". Among these he mentioned (a) transportation which is performed entirely within a city, (b) packing and unpacking of household goods and (c) storage of household goods while in

transit. In all three of these instances minimum rates have been established by this Commission.

The staff representative urged also that the relationship of the time of actual transportation to total hours involved in the moving operation is not of importance in resolving the issue here under consideration. He directed attention to other types of transportation subject to minimum rates in which the relationships of loading and unloading time to transit time are similar to those involved in house moving operations. One such situation is found in the transportation of machinery in other than low-bed equipment.^{7/} Here it is normal for the dismantling, removal, loading, unloading and resetting of the machinery to consume considerably more time than the transit time from point of origin to point of destination.

Relative to this same point, testimony of the aforesaid tariff expert, introduced on behalf of Association, shows that similar time relationships are experienced in connection with the transportation of oil well derricks and equipment from one field location to another. Here again, he testified, the loading and unloading times in many instances far exceed the transit times, the entire operation being covered by the hourly minimum rates established by the Commission.

With reference to the possibility of conflict between the jurisdictions of the Contractors' State License Board and this Commission, the staff representative pointed out that this is not a new situation, as certain specialized machinery carriers are

^{7/} By the provisions of Item No. 40 of Minimum Rate Tariff No. 2, commodities of abnormal size or weight, which, because of such size or weight, require the use of, and are transported in low-bed trailers, are not subject to the rates named in that tariff.

also required to possess a C-21 contractor's license and, as hereinbefore pointed out, are subject to this Commission's minimum rates for the entire operation. The fact that the house movers are members of the AGC, he indicated, also does not present a new situation. Certain other types of carriers also are subject to labor contracts negotiated by AGC and at the same time are subject to the Commission's minimum rates. These include the carriers of oil field and oil well supplies, with pipe stringing as an accessorial service, and the haulers of rock, sand and gravel to construction projects.

With reference to the contention of United that the brokers who buy and sell houses are at a disadvantage in competition with house movers who also buy and sell but assertedly are not subject to the minimum rates in transporting their own property, the staff representative drew attention to Sections 3549 and 3550 of the Public Utilities Code. These sections, which were enacted in 1963, he said, would require that the carriers assess minimum rates for the transportation of houses when moving such houses for their own account.^{8/}

^{8/} The sections cited read as follows:

"3549. Any person or corporation engaged in any business or enterprise other than the transportation of persons or property who also transports property by motor vehicle for compensation shall be deemed to be a highway carrier for hire through a device or arrangement in violation of this chapter unless such transportation is within the scope and in furtherance of a primary business enterprise, other than transportation, in which such person or corporation is engaged."

"3550. 'Device or arrangement,' as used in this chapter, means and includes any and all methods, means, agreements, circumstances, operations, or subterfuges under which any person or corporation undertakes for hire to conduct, direct, control, or otherwise perform, the transportation by motor vehicle of property upon the public highways of this State."

The quoted sections are included in Article 2 (Regulation of Highway Carriers) of Chapter 1, Division 2, of the Code. Corresponding provisions have not been added to Article 2 (Regulation of City Carriers) of Chapter 2, Division 2, of the Code. The language employed in the above sections is susceptible of various interpretations; it is not at all clear that the provisions are pertinent to the situation in connection with which they have been cited.

The position of Association, California Trucking Association and the Commission's staff relative to the points thus far considered is that (1) The entire house moving operation is transportation or service accessorial thereto and as such is subject to regulation by the Commission, and (2) The Commission acted properly in prescribing minimum rates and rules to govern such operations. It is the view of these parties also that the rates and rules under attack are reasonable.

As was established in Decision No. 68359, the prosecution of the freeway construction program in Southern California in recent years resulted in the need for relocation of large numbers of houses. It is true, as argued by counsel for United, that the primary intent of the Division of Highways, in getting houses moved, is to clear the land for freeway purposes. Nevertheless, as pointed out by counsel for Association in closing argument, transportation is the very essence of the house moving business. In other words, "a house is to be moved from here to there." Obviously, before it can be moved it must be separated from its foundation and in other respects prepared for movement over the public thoroughfares to its place of destination. Then, when the house arrives at the latter point it must be lowered onto a foundation and secured thereto. Other services may also be necessary to complete the job. These prior and subsequent services are as much a part of the transportation as is the horizontal movement of the house from the old resting place to the new resting place. They may be considered as accessorial to said movement^{9/} but they are integral parts of the transportation

^{9/} As hereinbefore pointed out, MRT No. 16 specifically provides that said services are included in the application of the basic hourly rates. Specific charges are also provided for certain other services which may be involved.

service performed by the house mover, and as such are subject to regulation by this Commission.

We see no problems arising from the fact that a house mover must, as a contractor, secure a license from the Contractors' State License Board and, as a highway or city carrier, obtain a permit from this Commission. The mover is a contractor within the purview of the Business and Professions Code while he is moving a house over the public streets, not just while he is rendering the necessary services preliminary to and subsequent to the actual movement. Thus, if a conflict of authorities and jurisdictions were considered to exist, such conflict would exist as to the entire operation. The threat of such conflict, therefore, cannot be validly advanced as a basis for concluding that only the actual movement of the building between origin and destination is "transportation", subject to regulation by this Commission. *e*

The record establishes that many members of the house moving industry are not only involved in transportation but also in construction, contracting, brokerage, buying and selling, and possibly in real estate investment. Any or all of these additional operations are in connection with the transportation of houses.

House Moving Contractors Association of California
(Association) argues that if house moving were subject to minimum

rates, house movers could afford better equipment and, consequently, would cut down moving time. Because of this, Association alleges that the public interest would be benefitted. The establishment of minimum rates, Association also asserts, would stop underpricing and cutthroat competition among house movers.

United House Sales (United) argues that the old equipment which is presently used is admirably suited for this work; that newer equipment is unnecessary and too costly for the job; that in the nature of the work, speed in transit is not a necessary element; that other traffic has priority; that the houses in the course of a move must often be sidetracked, and for these reasons the argument of the Association is without merit. The record establishes that safety requirements are, for the most part, covered by local regulations.

A further argument of Association is that if minimum rates are not established, its members will go out of the house moving business and there will be no one left to perform this needed service in that portion of Southern California described in the petition.

United assures the Commission that it will gladly fulfill any need thus developed and without the establishment of minimum rates.

Notwithstanding the many issues and arguments presented herein, the essentials are as follows:

United contends that the jurisdiction of this Commission does not extend to those services performed by the carrier prior and subsequent to the actual movement of a building from origin to destination, and that the Commission is, therefore, without

new

authority to establish minimum rates to govern these accessorial services. While conceding the Commission does have the power to establish rates for the actual movement of the house, United urges that these not be established because the movement is only a small part of the time consumed in house moving.

It may be true for houses, as it is for innumerable other commodities and transportation operations, that the actual movement on streets or highways is only a minor part of the entire operation involved. The Public Utilities Code nowhere suggests, however, that the relationship of the time of actual movement to the total time involved in the operation is a factor in determination of the Commission's jurisdiction. Furthermore, Section 3662 and other sections referring to accessorial charges make it clear that in the exercise of its general jurisdiction (Section 3511) when the Commission desires to do so, it is empowered to approve minimum rates not only for transportation, but also for accessorial services performed by the carrier. Having concluded that the entire operation of house moving is subject to the Commission's jurisdiction, including the authority to establish minimum rates, the remaining question is, does the public interest require the establishment of minimum rates and, if so, should they be only for the actual movement of the houses or for the entire operation. We answer this by stating no minimum rates should be established. This is because there is lacking in the record now before us that an obvious or persuasive need in the public interest exists or that rates, if established, would have any meaningful or useful effect on the transportation involved.

As compared to the vast majority of commodities and their transportation needs from carriers, house moving involves

new

unique movements in which specific operational problems may not often be repeated, in some instances are beyond anticipation, and where highly specialized equipment not suited to nor required by the average carrier is employed. Where singular movements with specialized equipment are involved, the Commission has previously recognized the necessity and practicability of deviating from its general policy of rate regulation. For example, Item 40 of Minimum Rate Tariff No. 2 exempts from the application of minimum rates named commodities of abnormal size or weight which, because of such size and weight, require the use of and are transported on low-bed trailers. This item seems to precisely describe the movement of houses which, because of their size and weight, are transported on low-bed trailers (dollies). The exemption we propose also recognizes that the imponderables in this type of transportation make it difficult, if not impossible, to provide the public with a predetermination of transportation costs with any certainty. The application of minimum rates on an hourly basis in this complex area of transportation will result in economic uncertainties for the public which should and can be obviated through competitive bids by carriers who are experienced in this field. Furthermore, the record on rehearing fails to establish that the institution of minimum rates on an hourly basis would have a meaningful effect on the alleged underpricing and cutthroat competition.

On rehearing, we find that:

(1) The moving of houses over the public highways for compensation is transportation of property, and the carrier of such is a highway carrier within the meaning of Section 3511 of the Public Utilities Code.

(2) Accessorial services rendered by highway carriers prior to and subsequent to the actual movement of houses are subject to the jurisdiction of this Commission.

(3) The public interest does not require, on the basis of the record in this case, that this Commission establish minimum rates for house moving in that portion of Southern California sought for such regulation by Association.

(4) All findings made in Decision No. 68359 should be rescinded.

On rehearing, we conclude that:

1. Conclusion No. 1 in said Decision No. 68359 should be rescinded; Petitions Nos. 261 and 36 in Cases Nos. 5432 and 5435, respectively, should be denied; and Minimum Rate Tariff No. 16 and related provisions of Minimum Rate Tariffs Nos. 2, 4-B and 5 should be canceled.

2. Conclusion No. 2 in said Decision No. 68359, to the effect that Petition No. 27 in Case No. 5439 should be dismissed, since Association, in effect, withdrew said petition by amending its proposals so as not to apply to the transportation of houses within San Diego County, should be affirmed.

In order to avoid duplication of tariff distribution in canceling related suspended provisions in Minimum Rate Tariffs Nos. 2, 4-B and 5, said tariffs will be amended by separate orders.

O R D E R

IT IS ORDERED that:

1. Petitions for Modification No. 261, in Case No. 5432, and No. 36, in Case No. 5435, are denied.
2. Petition for Modification No. 27, in Case No. 5439, is dismissed.
3. Minimum Rate Tariff No. 16 (Appendix B of Decision No. 68359, as amended) is further amended by incorporating therein, to become effective July 30, 1966, Supplement No. 2, effecting the cancellation of said tariff, which supplement is attached hereto and by this reference made a part hereof.

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

Dated at San Francisco, California, this 28th day of JUNE, 1966.

Richard E. Mitchell
 President

Reginald

 Commissioners

We dissent.

*Fredrick B. Halbachoff
George T. Crover*

I concur in the result but do so upon the ground that the regulation here proposed is beyond the jurisdiction of the Commission. The past consistent interpretation of the law has always been such by this agency.

William W. Bennett

CANCELLATION SUPPLEMENT

SUPPLEMENT NO. 2
(Cancels Supplement No. 1)

TO

MINIMUM RATE TARIFF 16

NAMING

MINIMUM RATES, RULES AND REGULATIONS

FOR THE

TRANSPORTATION OF

HOUSES AND OTHER BUILDINGS

OVER THE PUBLIC HIGHWAYS WITHIN

A PORTION OF SOUTHERN CALIFORNIA

BY

RADIAL HIGHWAY COMMON CARRIERS

HIGHWAY CONTRACT CARRIERS

AND

CITY CARRIERS

CANCELLATION NOTICE

Minimum Rate Tariff 16 is canceled.

Decision No. 70919

EFFECTIVE JULY 30, 1966

Issued by the
Public Utilities Commission of the State of California
State Building, Civic Center
San Francisco, California