

ORIGINAL

Decision No. 84317

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
books, records, accounts, and
business practices of BEKINS MOVING
AND STORAGE CO., a California
corporation.

Case No. 9543
(Filed April 17, 1973)

Knapp, Gill, Hibbert, and Stevens,
by Wyman C. Knapp, Attorney at
Law, for Bekins Moving and Storage
Co., respondent.
Lionel B. Wilson, Attorney at Law,
for the Commission staff.

O P I N I O N

The Commission's Order Instituting Investigation in
Case No. 9543 (OII) reads as follows:

"It appearing that Bekins Moving and Storage Co., a California corporation, hereafter referred to as respondent Bekins, whose mailing address is 1335 So. Figueroa, Los Angeles, California 90015, is engaged in the business of transporting property over the public highways in the State of California for compensation, having been issued a Household Goods Carrier Permit, a Radial Highway Common Carrier Permit, and a Highway Contract Carrier Permit, and it further appearing respondent Bekins may have violated Section 5221 of the Public Utilities Code;

"IT IS ORDERED that an investigation on the Commission's own motion is hereby instituted into the operations, books, records, accounts and business practices of respondent Bekins for the purpose of determining:

1. Whether or not respondent Bekins has violated Section 5221 of the Public Utilities Code by failing to file a quarterly report containing all underestimates, as required in Minimum Rate Tariff 4-B, Items 31 and 31.1, and supplements thereto, for the period April 1 through June 30, 1972, inclusive.

2. Whether or not the Commission should cancel, revoke, alter, amend or suspend the operating authority held by respondent Bekins, or, whether, as an alternative, a fine should be imposed upon respondent Bekins, all pursuant to Section 5285 of the Public Utilities Code.
3. Whether respondent Bekins should be ordered to cease and desist from any and all unlawful practices.
4. Whether any other order or orders that may be appropriate should be entered in the lawful exercise of the Commission's jurisdiction."

The OII identified 40 shipments transported at distance rates by Bekins during the period April 1 through June 30 (second quarter) of 1972, which purportedly involved underestimates that were not included in the statistical report the carrier filed with the Commission within 30 days after the end of the second quarter in compliance with paragraph 3 of Item 31.1 as published in MRT 4-B at that time.

Public hearing was held before Examiner Norman Haley in Los Angeles on November 28 and 29, 1973. Evidence was presented by two transportation analysts of the Commission staff and by the vice president and assistant secretary of Bekins. Five exhibits were received. The matter was submitted.

The rules involved in this proceeding with respect to reports of underestimates by household goods carriers were part of the estimating rules in MRT 4-B revised by Decisions Nos. 79571 and 79731 (1972), Case No. 5530, OSH 49. Those rules became effective in the tariff April 1, 1972 (the first day of the second quarter). The new rules permitted household goods carriers to provide estimates, but such estimates were not required. In the event an estimate was furnished for a distance rate move the estimate was required to be in writing and based on a visual inspection of the goods.

Quarterly statistical reports of distance rate underestimates^{1/} were required to be filed with the Commission for shipments where total charges at destination (based on actual weight and the established minimum rates) exceeded the estimate by 10 percent or \$25, whichever was greater (reportable underestimates). The quarterly statistical reports were required to show the number of reportable underestimates, the reasons therefore, and the amount of credit extended. The quarterly reports were required to be prepared on a form prescribed by the Commission in accordance with paragraph 3 of Item 31.1 of MRT 4-B. The Commission furnished household goods carriers with Form CE 137 for this purpose. The form listed 30 possible sources of underestimates. The form also stated that if other services were underestimated, that a separate schedule was to be attached.^{2/}

Staff Evidence

Staff Exhibit 1 shows that Bekins has a household goods carrier permit and other permits and has been served with various Commission minimum rate tariffs, including MRT 4-B and Distance Table 7. The exhibit shows that the company has 19 regional offices and 29 district offices in California.

^{1/} Under Decisions Nos. 79571 and 79631 (paragraph 3 of Item 31.1 of MRT 4-B) reports of underestimates for transportation subject to distance rates in cents per 100 pounds were required (rates in Items 300 and 320). Reports of underestimates for transportation subject to hourly rates (Item 330) were not required (50 constructive miles or less).

^{2/} The comparable underestimate reporting requirement in effect prior to April 1, 1972 was set forth in paragraph (f) of Item 33 of MRT 4-B (Third Revised Page 7-B). A monthly report was required with reasons to be stated for each reportable underestimate. However, no particular form of report was required.

In accordance with instructions given them by supervisors,^{3/} the two staff representatives commenced a check of respondent's records in September 1972 to determine whether there were any reportable underestimates of transportation charges during April, May, and June, 1972 which were not reported to the Commission as required.

Staff Exhibit 2 is a copy of Bekins' report of underestimates on Form CE 137 for the second quarter of 1972. The report (dated August 1, 1972) shows that during the second quarter 1,300^{4/} distance rated shipments were transported under the tariff, and that written estimates were given for 1,217 of them. It shows that reportable underestimates occurred in connection with 316 of the shipments. At the company's head office in Montebello some duplicate reporting was found which reduced the 316 figure to approximately 306. According to the staff's testimony quarterly reports of underestimates under distance rates prior to June, 1972 were compiled at the Montebello office from data furnished directly by the regional offices. Beginning in June, 1972 the company completed a changeover to data processing with systems centralized in Glendale. Underestimate data for the month of June were summarized in Glendale and subsequently furnished to Montebello where they were included with the data for April and May to make up the second quarter report.

^{3/} Instructions given the two staff representatives were oral. A general instructional memorandum of the staff dated July 5, 1972 (Bekins Exhibit 5) referred in part to deliberate underestimating by household goods carriers. However, in this investigation the staff did not contend that Bekins made any deliberate underestimates, and the record does not show that there were any.

^{4/} The record shows that this figure was incorrect. It was changed to an estimate of 2,500 (see Footnote 10 below).

Staff Exhibit 3 consists of 40 parts. Each part contains documents^{5/} for the 40 shipments from the second quarter of 1972 identified in the OII as containing underestimates not reported.^{6/} One of the staff witnesses testified to the first 37 parts of Exhibit 3, and the other witness testified to the last three parts. The documents in the first 37 parts were obtained after reviewing distance rated shipping documents for April, May, and June, 1972 at Bekins' offices in Montebello, Los Angeles, Pasadena, Hawthorne, San Diego, Long Beach, and Sacramento. Most of the documents in the 37 parts were obtained from Montebello.^{7/} Estimates were checked against actual charges. Where there was a reportable underestimate the document number was recorded and checked against the documents listed in the report of underestimates for the second quarter of 1972 (Exhibit 2). Those not listed were considered as unreported underestimates.

All of the shipping documents covering distance rate moves in Bekins' Concord office for the second quarter of 1972 were reviewed. It was determined from the office manager that reportable underestimates were required to be explained by the estimator in written reports attached to the shipping documents which subsequently were sent to Montebello. Without such a written explanation being attached to the shipping document there would be no underestimate report for the shipment to the head office. Investigation disclosed that three of the 11 reportable underestimates had not been reported (Parts 38, 39, and 40 of Exhibit 3).

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- ^{5/} For each shipment Exhibit 3 included an estimated cost of services document and a combined bill of lading and expense (freight) bill.
- ^{6/} The OII covered transportation identified by 337 freight bill numbers. Of these 40 were marked with an asterisk which showed that they represented underestimates not reported. Exhibits 3 and 4 pertained to the same shipments. There was no testimony concerning the other 297 freight bill numbers listed in the OII.
- ^{7/} The testimony shows that the Montebello office had the bills of lading and expense (freight) bills, but copies of estimates were not attached. Copies of the written estimates were obtained from the originating offices.

Staff Exhibit 4 summarizes data taken from the documents in the 40 parts of Exhibit 3. Exhibit 4 shows, among other things, the charges for each shipment; the amounts of the estimates, underestimates, and the differences; the apparent cause of each underestimate by categories from Form CE 137 (Exhibit 2); and the debtor. The debtors for approximately half of the shipments were corporations. The remaining debtors were individuals (those identified as COD).

The staff witnesses did not check whether any of the 40 shipments identified in Exhibits 3 and 4 had been included in underestimate reports for any quarter other than the second quarter of 1972. This was because subsequent underestimate reports were not due nor available at the time of their investigations.

Respondent's Evidence

The vice president of Bekins testified that the second quarter underestimate report for 1972 was the company's first report of Form CE 137 (Exhibit 2) with the 30 categories of possible sources listed. It was his testimony that Bekins found that with its shipment volume and number of offices the new requirements created many problems in the carrier's operations which made it virtually impossible to do the reporting work manually. It also was determined that because of the possibility of many duplications it no longer would be feasible to compile underestimate statistics separately and that they should be tied into some other definite function. It was arranged so that those data would be compiled at the time that revenue accounting (distribution) is made. Additionally, it was decided that reporting should be computerized. During April and May 1972 major changeovers were made in respondent's procedures in an effort to comply promptly with the new estimating and reporting requirements.

Many difficulties were encountered during the changeover due primarily to having two inconsistent systems of procedures in effect at the same time, one on a manual and the other on a computerized basis. The witness stated that the two systems clashed during April and May. Some errors and omissions occurred. The June, 1972 report was the first one compiled by computer.

One specific office of Bekins is charged with collection on the job and at the same time all other offices and agents in the State are credited for the revenues due them for bookings, commissions, packing, unpacking, etc. When there is a reportable underestimate, it is included on the same form before the form is sent to the computer. The computer is located in a central accounting section in Glendale where there is a staff of 200 employees. All company reports emanate from that facility.

Under the new Bekins' procedures with all information going directly to Glendale, the company is running a computer report on every salesman in the system. Each salesman has been assigned a code number and Bekins now knows exactly every quarter how many underestimates every salesman has and how many he reports. The computer reports are sent to the regional managers as well as to the district managers. This makes them aware that the sales force has made a certain number of underestimates during a quarter. The salesmen work for the regional and district managers and are responsible to them.

Under the new procedures of respondent estimate data also are placed on freight bills. The witness explained that this has eliminated the problem caused by underestimate reports inadvertently being retained in the origin office or not being made at all. Clerical errors assertedly have been reduced substantially under the central accounting procedures in effect since June 1, 1972.

According to the witness there is a revenue accounting cutoff at the 30th of each month to enable the company to get out the funds to the various offices and agents. There may be five or six different offices and agents involved with one total freight bill. This requires determinations of which offices performed particular services, collected money, and are to be charged with various collections. There can be separate charges for long carries, extra flights, packing, unpacking, etc. The witness stated that charges for various services on a particular shipment not included in the original estimate can come to Bekins at various times after the shipment has been delivered. A large amount of tracing is required to get all of the charges in so the bill can be issued to the debtor before the end of the month. However, some charges will come in after the accounting cutoff for the month. Anything that goes to revenue distribution after the 30th of the month goes on the next statement. Unless the Glendale center makes an accounting for revenue distribution for a shipment that moved prior to the end of a quarter, and there is a reportable underestimate, it will not appear until the next quarter.

Respondent's witness also explained that corporations move many of their employees and frequently the employees require services at origin and destination not contemplated when estimates were given.^{8/} Some moving jobs require disconnecting and re-connecting automatic washers, taking down and setting up television antennas, bolting and unbolting refrigerator compressor units, taking up and laying carpets, etc. For the performance of such work Bekins hires appliance companies, plumbers, electricians,

^{8/} As indicated above, Exhibit 4 shows that the debtors for approximately half of the 40 shipments identified therein were corporations.

and other tradesmen (third parties),^{9/} rather than use its own employees. Sometimes workers do not arrive to perform services until more than a day after the shipment has been delivered. Third parties bill Bekins for their services and the charges must be added to the billing that Bekins sends to the debtor corporation. Bekins can have an underestimate and not know about it until all of the third party bills come in, which may for some time.

The witness was of the opinion that by tying estimating into revenue distribution, which involves monetary debits and credits, Bekins now has a much tighter control over underestimate reporting. In one function charges are audited for proper tariff application and for addition and extension of charges.

Respondent's witness stated that in the last three quarters of 1972 the company filed reports of underestimates on the new Form CE 137, as required. The total number of MRT 4-B distance weight shipments in the second, third, and fourth quarters of 1972 were 2,500 (estimated),^{10/} 4,422, and 3,423, respectively. The witness said he reviewed the 40 shipments listed in the OII as underestimates not reported. He found 21 of the 40 shipments

^{9/} When the debtor is an individual such debtors usually arrange for third party services and Bekins usually does not become involved with those services.

^{10/} The total shipment figure shown on Exhibit 2 was 1,300. The witness explained that this was an error that occurred as the result of difficulty and confusion during the second quarter in the initial use of Form CE 137, and in converting from manual reporting to centralized computer reporting. The estimate of 2,500 shipments was arrived at subsequently by Bekins. (See Footnote 4, above.)

included in the third quarter report. He also found that another of the 40 was a cancelled bill that was not used. This left 18 distance weight shipments with reportable underestimates that had not been reported.^{11/} Of these 10 were corporation moves and eight were individual moves.

Position of Staff

At the request of staff counsel official notice was taken of Decision No. 78150 (1971) wherein Bekins was fined \$4,000 for 173 violations of underestimate reporting and ordered to cease and desist from further failure to report underestimates. He urged that in the light of the 18 reportable underestimates not included by Bekins in the report for the second quarter of 1972, representing a total underestimate amount of \$2,381.78, that a punitive fine of \$2,500 be collected pursuant to Section 5285 of the Public Utilities Code.

Position of Respondent

Attorney for Bekins urged that there was no basis in this case for any fine. He cited the progress Bekins made in the second quarter of 1972 converting procedures to the new Form CE 137, first on a manual basis and then on an automated basis; setting up a process whereby the company could determine the salesmen causing any underestimates and the reasons therefore; and establishing direct control of salesmen by district managers. Respondent's attorney contended that out of the total shipments transported (approximately 2,500) and the number of underestimates properly reported (approximately 306), that the number of underestimates not reported (18) was de minimis. He alleged that

^{11/} According to the witness the 18 unreported shipments were distributed among 8 district offices as follows: San Diego 8, Long Beach 2, North Hollywood 3, Sacramento 1, Santa Ana 2, San Bernardino 1, and Los Angeles 1. Assertedly, a clerical problem at San Diego, where there were 8, has been corrected. The witness stated that there were 10 other district offices where there were no unreported underestimates (Glendale, Pasadena, Beverly Hills, Santa Barbara, Fresno, Redwood City, San Jose, San Francisco, San Rafael, and Oakland).

the company had made substantial and honest compliance. He argued that for an investigation to be made in the very first quarter that a decision of this type is placed in effect and then to suggest a fine for noncompliance would not result in sound administrative justice. It was his position that it is the practice of this Commission and other regulatory agencies to give a reasonable time after a decision requiring extensive new carrier procedures has been placed in effect before filing a case against parties for failure to comply.

Attorney for respondent pointed out that further revisions in estimating and reporting rules^{12/} for inclusion in MRT 4-B had been promulgated at the time of the hearing in this proceeding. The requirement for statistical reports of underestimates was to be changed from quarterly to semiannually. He cited the creation of an addendum order whereby original estimates would be updated to reflect changes in shipping conditions at origin and destination. He was of the opinion that these factors, among others, would obviate some of the problems experienced by Bekins under the rules effective April 1, 1972, and would tend to reduce underestimates and reporting failures of household goods carriers generally.

Discussion

The records show that following establishment of new and revised household goods estimating and reporting rules effective April 1, 1972, pursuant to Decisions Nos. 79571 and 79731, respondent Bekins made major changes in its procedures which it

^{12/} Respondent's attorney was referring to Decisions Nos. 81518 (1973) and 82157 (1973) in Case No. 5330, OSH 68. The provisions involved did not become effective in MRT 4-B until November 23, 1974. See Decision No. 83505 (1974) and decisions cited therein.

discovered would be required before it could comply fully with the changed requirements. The changeovers in Bekins' procedures, which were made during April and May 1972, resulted in some confusion within the organization. During April and May separate and inconsistent manual and computerized systems were in effect concurrently, the former being phased out and the latter being phased in. Certain errors and omissions occurred which were reflected in the carrier's statistical report for the second quarter of 1972. The total number of shipments was at first substantially understated requiring revision based on an estimate. The total number of underestimates properly reported required correction. A total of 18 reportable underestimates were not reported to the Commission.^{13/}

By June 1, 1972 Bekins' new computerized procedures became operative. However, the record is clear that the second quarter statistical report reflected data gathering, accounting, and under-estimate reporting procedures that were in the process of being extensively revised toward better compliance with new MRT 4-B rules. Accordingly, the errors and omissions that occurred in that report cannot be considered typical or characteristic of respondent's underestimate reporting. Under circumstances where substantial remedial action has been taken with respect to its underestimate reporting, we do not feel that the 18 omissions out of 2,500 shipments relative to the second quarter report for 1972 warrants a penalty being imposed or other action being taken against respondent.

Although this investigation will be discontinued, it, by no means, follows that it was improvidently instituted. When we learn of any asserted errors, omissions, or other failures of a household goods carrier with respect to estimating or the reporting of underestimates, a most thorough inquiry will be conducted, and the carrier involved must be prepared to demonstrate affirmatively that the provisions of MRT 4-B have not been violated.

^{13/} From paragraph 3 of Item 31.1, Fourth Revised Page 7-B of MRT 4-B, in conjunction with the testimony of respondent's witness, we conclude that 21 shipments in Exhibits 3 and 4, transported in June 1972, which subsequently were listed in the carrier's underestimate report for the third quarter of 1972, were correctly included in that report.

Findings

1. Respondent Bekins operates pursuant to permits authorizing operations as a household goods carrier, a radial highway common carrier, and a highway contract carrier.

2. Respondent has been served with various minimum rate tariffs issued by the Commission, including MRT 4-B and Distance Table 7.

3. On April 1, 1972 new and revised household goods estimating rules, including rules pertaining to the statistical reporting of certain underestimates, became effective in MRT 4-B pursuant to Decisions Nos. 79571 and 79631. Quarterly statistical reports were required to be prepared on Form CE 137 which provided that reportable distance rate underestimates be summarized by 30 possible sources.

4. The staff investigation in this proceeding commenced in September, 1972. It covered shipments that moved between April 1 and June 30, 1972, the quarter in which the rules identified in Finding 3 first became effective.

5. Beginning April 1, 1972 respondent began applying the rules identified in Finding 3.

6. When respondent began to apply the rules identified in Finding 3 it found that with its volume of business, the number of offices located throughout the State and the new detail required, the changed rules were causing problems with which it could not cope under its existing estimating, record keeping, and accounting procedures.

7. Major changes in procedures were made by respondent during April and May, 1972 for the purpose of complying promptly with the rules identified in Finding 3. Those changes included establishment and maintenance of additional records and controls

relative to estimating activities of salesmen, the tying together ✓
of estimating and revenue accounting functions, and the application
of centralized data processing to the revised procedures.

8. During April and May, 1972 separate manual and computerized procedures were in effect concurrently. Substantial difficulties occurred and confusion resulted from respondent's attempts to gather data and apply the rules identified in Finding 3 under its former procedures, and at the same time convert to the revised procedures identified in Finding 7. Certain errors and omissions occurred in statistics gathered by respondent and in the construction of its quarterly statistical report (Exhibit 2). The total shipment count for the second quarter was substantially understated requiring an approximation. The total number of reportable underestimates required correction. There were 18 reportable underestimates that were not reported to the Commission.

9. On June 1, 1972 (the last month of the second quarter) the new procedures of respondent identified in Finding 7 became operative.

10. The results of the September, 1972 staff investigation of respondent's statistical reporting of underestimates for the second quarter of 1972 reflected certain nontypical and nonrecurring circumstances in respondent's operations resulting from the major changes in procedure identified in Finding 7 which it found it was required to make in an effort to comply with MRT 4-B reporting requirements identified in Finding 3.

11. The record in this case does not justify any penalty or other action against respondent.

We conclude that the investigation in this proceeding should be discontinued and that Case No. 9543 should be terminated.

O R D E R

IT IS ORDERED that the investigation in this proceeding is discontinued and that Case No. 9543 is terminated.

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

Dated at San Francisco, California, this 15th
day of APRIL, 1975.

I dissent:

The Commission
has stated in this
order that it
sanctions a theory
of "Diminishing Illegality"
which I believe to be improper.

Edward J. [Signature], Commissioner

Yvonne L. [Signature] President
William [Signature]
Leonard [Signature]
[Signature] Commissioners