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Decision 91-04-030 April 10, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Regulation of)
Used Household Goods Transportation)
by Truck.)

ORIGINAL

I.89-11-003

(Filed November 3, 1989)

ORDER GRANTING LIMITED REHEARING OF D.90-12-091.
SCHEDULING FURTHER HEARINGS, DENYING REHEARING IN OTHER RESPECTS.
AND PARTIALLY LIFTING THE STAY OF D.90-12-091

On December 19, 1990, we approved Decision (D.) 90-12-091, which revised our regulatory program for household goods carriers. This Decision established a program of maximum (rather than minimum) rates and improved consumer protections.

On January 25, 1991, the California Moving and Storage Association (CMSA) filed an application for rehearing of our Decision. CMSA's application opposed the setting of maximum rates on policy grounds and alleged that the new maximum rates do not properly account for the costs of the services performed by household goods carriers. CMSA also asked for a delay in implementation of the new program.

More recently, as ordered by D.90-12-091, our Transportation Division conducted a series of workshops on the new program. A number of policy and technical concerns about implementation of our new program were raised at these workshops. These concerns are summarized in the Transportation Division's report on the workshops that has been filed in this proceeding.

On March 22, 1991, we approved D.91-03-072, which stayed our earlier Decision. We issued the stay, and delayed implementation of our new program of maximum rates and improved consumer protections until January 1, 1992, so that we could conduct a limited rehearing, as well as further hearings on

selected issues, prior to implementation. At the same time, we restated our commitment to a program of maximum rates and enhanced consumer protections. The purpose of the stay is to permit further consideration of some of the details of the new program that are best resolved prior to implementation.

Our March 22nd order did not spell out in full detail the scope of the limited rehearing, nor the other issues on which we wish to hold further hearings prior to implementation. This order will do so.

Today's order will also partially lift the stay of our earlier Decision. That Decision not only ordered implementation of our new program of maximum rates and enhanced consumer protections, but also mandated a number of other measures relating to household goods carriers.

While the limited rehearing ordered today requires that certain aspects of the Decision continue to be stayed, there is no reason to delay implementation of other actions mandated by the Decision. These include: 1) amending the certification filed by permit applicants, 2) preparing a report to address carrier performance and consumer protection measures, 3) monitoring carrier safety experience, 4) enforcement to prevent illegal operations, 5) overseeing consumer outreach, 6) proceeding with the second phase of the investigation, and 7) ordering the closing by separate order of C.5330, OSH 100 and related C.5432, OSH 598. Neither CMSA's application for rehearing nor the comments made at the workshops indicated any need to stay these other aspects of the Decision.

In our March 22nd order we stated our intention to implement our new program on January 1, 1992. Today's order sets out a schedule for the hearings in this proceeding that will enable us to meet that deadline. To ensure sufficient flexibility, our order will permit the assigned Administrative Law Judge (ALJ), after consulting with the Assigned Commissioner, to modify the schedule we set out today. Our order will also permit the assigned ALJ, after consultation with the Assigned

2. What alternative time periods, if any, should be used to escalate the cost components of the interim maximum rate tariff to account for inflation and what are the values that should be used;
3. To what extent, if any, does the Proposition 111 cost component of the interim maximum rate tariff fail to include the cost of fuel taxes and vehicle weight fees which became effective on January 1, 1991 and what values should be used to fully account for the necessary costs;
4. How should maximum rates account for overtime hours and what are the values that should be used;
5. Is there any reason why the maximum fixed rate should be more than 10% above the basic cost justified rate, in order to allow carriers the pricing flexibility needed for shipments with abnormally difficult origins and destinations, route and time of day restrictions, and other circumstances which might result in extraordinary shipping costs, and if so, what should the margin above the basic cost justified rate be.

We believe that a rehearing limited in this manner should address CMSA's concerns without further delaying implementation of our maximum rate program. We will deny the application for rehearing insofar as it invites us to reconsider whether or not maximum rates should be adopted, and in any other respect in which rehearing is not expressly granted by this order.

Further Hearings

In addition to the issues we will review upon rehearing, there are a number of other issues we wish to resolve before implementing interim maximum rates. Some of these issues are presently scheduled for consideration in Phase II of this investigation, and some were raised in the workshops conducted by the Transportation Division or otherwise brought to our attention. These issues include whether the Commission should

adopt certain noncontroversial technical changes recommended by the Transportation Division.

We are deferring consideration of detailed final cost methodology and studies for final maximum rates until Phase III. Accordingly we will not consider in Phase II proposals to conduct complete, detailed, final cost studies at this time.

The following issues will be examined prior to implementation of interim maximum rates in January, 1992:

1. What interim methodology should be used, and components included, in establishing interim maximum rates, if different than the method adopted in Phase I;
2. What changes to the level of interim maximum rates should be made;
3. What changes need to be made, if any, in providing for maximum rates above the maximum fixed rates set in Maximum Rate Tariff 4 (e.g., should maximum rates be allowed to exceed the maximum fixed rate level if the estimate is made in writing no less than ten days before the move; does a provision need to be added to let carriers set maximum rates above the maximum fixed rates if the shipper first contacts the carrier less than ten days before the move; if abuses of a less than ten-day provision occur, can they be effectively controlled; is the risk of abuses by a less than ten-day provision greater or less than the benefit of service to some shippers who might otherwise be denied service);
4. What changes if any are needed to the "Contract for Move" form and procedure for its completion (e.g., should the carrier be required to include a ceiling price and sign the form no less than 3 days before the move begins);
5. Is the current ceiling price requirement too costly to implement and what alternatives would provide sufficient consumer protection;

6. Should the Commission allow binding estimates or guaranteed prices instead of a ceiling price, or both;
7. What changes should be made to simplify or improve the documentation requirements;
8. Should the \$100 assessment (for failure to give the "Important Information for Persons Moving Household Goods" booklet, or obtain a signature that the shipper already has one) and the 30 percent adjustment from maximum rates (for a carrier not completing the "Contract for Move") be increased or decreased;
9. What should be the level of basic valuation (e.g., \$20,000);
10. What should valuation charges be, including those for valuations in excess of the basic level and for full value protection;
11. Should minimum charges (e.g., hours, weights, packing materials) continue to be allowed, or should some limits be placed on minimum charges;
12. Should the noncontroversial technical tariff revisions recommended by Transportation Division be adopted;
13. Should we require carriers to inform customers who receive estimates more than 10 days ahead if the price quoted is greater than that derived under maximum fixed rates, and if so, how much greater;
14. What changes, if any, should be made to our new program to make the relationship between carriers and shippers less adversarial;
15. How should rates account for the cost of moving pianos, packing shipments, and short notice moves.

Noncontroversial Technical Changes

Transportation Division suggests a number of noncontroversial technical changes to the tariff which will correct erroneous references, replace words inadvertently deleted when MRT 4-C was revised to MAX 4, define certain potentially ambiguous terms used throughout the document, clarify certain ambiguous references, and fill in phone numbers which were not available at the time the decision was issued. These changes are based both on Transportation Division's own analysis of technical shortcomings in the tariff revision attached to the Decision and on comments raised by parties to the workshops held in February and March of 1991.

Because the parties have not had an opportunity to review the technical revisions recommended by the Transportation Division, and because it is possible that one or more parties might dispute either the wisdom or the noncontroversial nature of these changes, we will provide an opportunity for parties to comment on these recommendations before we adopt them as actual tariff revisions. We will, therefore, order the Transportation Division to serve on all parties to Phases I and II by May 1, 1991 a report setting forth all tariff revisions it believes are both technically necessary and noncontroversial, together with a reasonable explanation of the reasons for its recommendations. Parties may submit with their direct testimony any comments on the Transportation Division report, and submit with their rebuttal testimony a response to the comments of any other party.

Consolidation of Hearings

Although the issues subject to limited rehearing are distinct from those issues subject to further hearing prior to implementation of interim maximum rates, it would be more efficient to consolidate these hearings than to hold two separate sets of pre-implementation hearings. We have, therefore, decided to proceed with the limited rehearing, and the further pre-implementation hearings, on a consolidated basis. Any noncontroversial technical tariff changes recommended by

Transportation Division in the report discussed earlier will also be considered during the consolidated hearing. We will refer to the consolidated rehearing and further pre-implementation hearing as Phase II of this proceeding.

Since the further pre-implementation hearing issues do not encompass all issues originally scheduled for Phase II of this proceeding, we will hear the remaining issues in what we hereby designate Phase III of this proceeding. Phase III will proceed only after a Phase II decision has been issued.

Our decision to hear some of the original Phase II issues before, and some after, our implementation of interim maximum rates balances our desire to promptly implement a new regulatory program we believe provides substantial benefits to the public with our desire to thoroughly consider all aspects of our regulatory transition. Phase II includes those issues we felt were clearly necessary to resolve prior to program implementation, while Phase III includes those issues we believe can wait for future consideration without jeopardizing either carrier or shipper interests in any significant way.

As noted earlier, the ALJ, in consultation with the Assigned Commissioner, may add or subtract issues from Phase II, and may modify the schedule, if this is found to be necessary or desirable.

PHASE III

In Phase III we will determine the final maximum rate methodology and rates and resolve final implementation issues. In order to make clear what issues are not scheduled for consideration in Phase II, we will list the issues previously slated for Phase II which we are today deferring until Phase III:

1. What final methodology should be used, and components included, in establishing and updating final maximum rates;
2. What changes to the level of interim maximum rates should be made to establish final maximum rates;

3. Should carrier-filed maximum rates be allowed, and if so, under what terms and conditions;
4. What changes, if any, should be made to increase the effectiveness of the Commission's enforcement efforts against both unlicensed, illegal carriers and permitted carriers not complying with our program;
5. How can CMSA, NMSA, NICMC, and the Commission work together to promote the best qualities within the industry;
6. Should all carriers be retested to retain operating authority after a fixed deadline given our new program;
7. Should valuation charges be bundled or unbundled in maximum rates;
8. Should informed shippers be allowed to waive all consumer protections in the maximum rate program, and if so, how would that be accomplished;
9. Should the "Contract for Move" be useable to cover several moves;
10. Should the carrier be subject to a penalty for failure to conduct the move on the date agreed for shipments weighing less than 5,000 pounds and/or transported less than 75 constructive miles. Should the Commission specify the level of liquidated damages a carrier may assess a shipper if the shipper cancels an agreed-upon move without adequate notice;
11. Should the distance table (constructive miles) be abandoned, with maximum rates based on actual miles. Should carriers be allowed to charge based on hours for shipments over 50 miles;
12. Should the cost of estimates be bundled in maximum rates (and estimates made for free when the carrier agrees to make an estimate) or should the cost be unbundled and charged separately. If unbundled, should the carrier be authorized to waive the estimating cost if the shipper

selects the carrier for the move. Should the cost carriers may assess for estimates be subject to a maximum rate;

13. What carrier performance report efforts should the Commission undertake. What consumer outreach efforts should the Commission undertake; and
14. Should carriers be given a certain number of days to settle a loss and damage claim;

We trust that today's order will allow the Commission to consider in limited rehearings the concerns raised by CMSA regarding maximum rate cost components and to consider in further hearings other issues that should be resolved before the new maximum rate program is implemented on a schedule that will ensure that the benefits of our new regulatory program are made available as soon as reasonably practical. The Phase III hearings ordered today will allow further refinement of the new program on a timely basis.

Therefore, good cause appearing,
IT IS ORDERED that:

1. Limited Rehearing of Decision (D.) 90-12-091 is granted with respect to the following specific issues only:

1. What alternative published indices or reports, if any, should be used to update the cost components of the MRT 4-C rates (so as to yield new maximum rates) and what values from such indices or reports should be used;
2. What alternative time periods, if any, should be used to escalate the cost components of the interim maximum rate tariff to account for inflation and what are the values that should be used;
3. To what extent, if any, does the Proposition 111 cost component of the interim maximum rate tariff fail to include the cost of fuel taxes and vehicle weight fees which became

effective on January 1, 1991 and what values should be used to fully account for the necessary costs;

4. How should maximum rates account for overtime hours and what are the values that should be used;
5. Is there any reason why the maximum fixed rate should be more than 10% above the basic cost justified rate, in order to allow carriers the pricing flexibility needed for shipments with abnormally difficult origins and destinations, route and time of day restrictions, and other circumstances which might result in extraordinary shipping costs, and if so, what should the margin above the basic cost justified rate be.

2. Transportation Division (TD) is ordered to file and serve on all parties by May 1, 1991 a report setting forth its recommendations for noncontroversial technical revisions of the interim maximum rate tariff set forth in Attachment B to D.90-12-091. Parties to Phase II of this investigation are authorized to comment in their direct testimony on TD's recommended tariff revisions, and to respond in their rebuttal testimony to comments made by other parties.

3. Ordering Paragraphs 1, 2 and 11 of Decision (D.) 90-12-091 remain stayed pending further order of the Commission.

4. The stay of Ordering Paragraph 3 of D.90-12-091 is lifted, so that Ordering Paragraph 3 will go into effect 60 days from today. Transportation Division (TD) will conform the certification signed and filed by used household goods permit applicants to require the showing specified in Public Utilities Code § 3553, effective for all applications filed 60 days from the effective date of this order and thereafter.

5. The stay of Ordering Paragraphs 4 and 5 of D.90-12-091 remains in effect pending further order of the Commission, except for (1) TD's carrier performance and consumer outreach report and (2) TD's enforcement report. TD will issue its preliminary

carrier performance and consumer outreach report by July 19, 1991; will conduct a workshop within 2 months of issuing the preliminary report; and issue its final report within 3 months of the final workshop. TD will issue its follow-up enforcement report by March 19, 1992. These reports will be served on all parties to Phase II.

6. The stay of Ordering Paragraphs 7 through 8 of D.90-12-091 is lifted. These are restated as Ordering Paragraphs 7 through 9, below.

7. TD will monitor the safety experience of household goods carriers including where reasonable:

- (1) Review of accident and citation rates to determine ways to improve safety;
- (2) Reactivate the revenue distribution survey program;
- (3) Collect mileage data on private carriers who now register with the Commission for insurance purposes;
- (4) Work with the California Highway Patrol (CHP) and other agencies to determine how a Department of Transportation (DOT) carrier identification numbering system could be integrated with the CHP and Commission numbering systems; and
- (5) Explore with the CHP a mandatory follow-up accident report for intrastate motor carrier accidents similar to DOT reports for intrastate accidents.

8. TD is directed to use all tools at its disposal to enforce the laws and regulations against illegal operations (both carriers operating without a permit and permitted carriers not in compliance with the law, and our rules and regulations), and bring cases to us and the district attorney for prosecution as appropriate.

9. TD is directed to oversee a consumer outreach effort within our current budget, to include preparation of periodic

press releases (in coordination with Public Affairs office), training of staff as necessary and placing public service information in appropriate telephone advertising directories.

10. Ordering Paragraph 9 of D.90-12-091 is superceded by the following:

An amended second phase of this investigation is ordered; designated as Phase II, this phase will consider the issues identified in this decision and summarized in Attachment A. Appearances in Phase I who are not now appearances in Phase II (i.e., did not file a new appearance at one of the prehearing conferences in Phase II, either January 31 or March 21) but who wish to participate in Phase II may make an appearance in Phase II by filing a letter with the Process Office, copy to the ALJ, and copy to all other appearances in Phase II no later than April 26, 1991.

The assigned ALJ or assigned Commissioner may add issues to or subtract issues from those listed as "Further Pre-implementation Hearing Issues" in Attachment A.

A third phase of this investigation is also ordered, to commence after a decision is issued in Phase II of this investigation. Phase III will consider the issues identified in this decision and summarized in Attachment B.

11. The stay of Ordering Paragraph 10 of D.90-12-091 is lifted; therefore: By separate order in these proceedings, Case (C.) 5330, Order Setting Hearing (OSH) 100 and related C.5432, OSH 958 are closed.

12. Phase II will be conducted according to the following schedule (subject to changes by the ALJ):

- a. Direct Testimony and/or any settlement shall be filed and served by May 17, 1991, along with a statement of position by counsel. (The statement of position is limited to 5 pages and is to be a summary of position by each party.) If a settlement is filed, the settling parties

shall specify the name(s) of sponsoring witness(es).

- b. Rebuttal Testimony together with any comments on any settlement shall be filed and served by May 31, 1991.
- c. Parties shall submit to the ALJ by June 6, 1991 an estimate of the time needed for cross-examination of testimony of other parties.
- d. Evidentiary hearings shall begin on Monday June 10, 1991 at 9:30 a.m. in the Commission courtroom at 505 Van Ness Avenue, San Francisco, and will conclude by June 21, 1991. The parties will present testimony in the same order as used in Phase I (Direct: DRA, CMSA, CMA, other parties; Rebuttal: CMSA, CMA, other parties, DRA).

13. To the extent not granted above, CMSA's application for rehearing is denied.

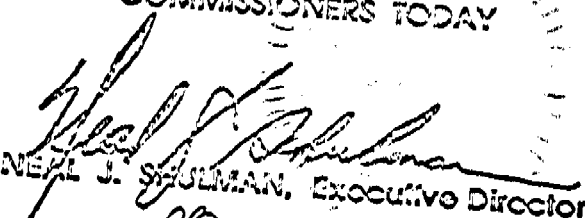
14. The Executive Director shall serve a copy of this Order on each subscriber to Minimum Rate Tariff 4-C, and all appearances in both Phase I and Phase II of this investigation.

This order is effective today.

Dated April 10, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
DANIEL WM. FESSLER
NORMAN D. SHUMWAY
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY


NEAL J. SCHULMAN, Executive Director
PB

ATTACHMENT A**PHASE II ISSUES****Limited Rehearing Issues**

1. What alternative published indices or reports, if any, should be used to update the cost components of the MRT 4-C rates (so as to yield new maximum rates) and what values from such indices or reports should be used;
2. What alternative time periods, if any, should be used to escalate the cost components of the interim maximum rate tariff to account for inflation and what are the values that should be used;
3. To what extent, if any, does the Proposition 111 cost component of the interim maximum rate tariff fail to include the cost of fuel taxes and vehicle weight fees which became effective on January 1, 1991 and what values should be used to fully account for the necessary costs;
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5. Is there any reason why the maximum fixed rate should be more than 10% above the basic cost justified rate, in order to allow carriers the pricing flexibility needed for shipments with abnormally difficult origins and destinations, route and time of day restrictions, and other circumstances which might result in extraordinary shipping costs, and if so, what should the margin above the basic cost justified rate be.

Further Pre-implementation Hearing Issues

1. What interim methodology should be used, and components included, in establishing interim maximum rates, if different than the method adopted in Phase I;
2. What changes to the level of interim maximum rates should be made;
3. What changes need to be made, if any, in providing for maximum rates above the maximum fixed rates set in Maximum Rate Tariff 4 (e.g., should maximum rates be allowed to exceed the maximum fixed rate level if the estimate is made in writing no less than ten days before the move; does a provision need to be added to let carriers set maximum rates above the maximum fixed rates if the shipper first contacts the carrier less than ten days before the move; if abuses of a less than ten-day provision occur, can they be effectively controlled; is the risk of abuses by a less than ten-day provision greater or less than the benefit of service to some shippers who might otherwise be denied service);
4. What changes if any are needed to the "Contract for Move" form and procedure for its completion (e.g., should the carrier be required to include a ceiling price and sign the form no less than 3 days before the move begins);
5. Is the current ceiling price requirement too costly to implement and what alternatives would provide sufficient consumer protection;
6. Should the Commission allow binding estimates or guaranteed prices instead of a ceiling price, or both;
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8. Should the \$100 assessment (for failure to give the "Important Information for Persons

Moving Household Goods" booklet, or obtain a signature that the shipper already has one) and the 30 percent adjustment from maximum rates (for a carrier not completing the "Contract for Move") be increased or decreased;

9. What should be the level of basic valuation (e.g., \$20,000);
10. What should valuation charges be, including those for valuations in excess of the basic level and for full value protection;
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13. Should we require carriers to inform customers who receive estimates more than 10 days ahead if the price quoted is greater than that derived under maximum fixed rates, and if so, how much greater;
14. What changes, if any, should be made to our new program to make the relationship between carriers and shippers less adversarial;
15. How should rates account for the cost of moving pianos, packing shipments, and short notice moves.

ATTACHMENT B**PHASE III ISSUES**

1. What final methodology should be used, and components included, in establishing and updating final maximum rates;
2. What changes to the level of interim maximum rates should be made to establish final maximum rates;
3. Should carrier-filed maximum rates be allowed, and if so, under what terms and conditions;
4. What changes, if any, should be made to increase the effectiveness of the Commission's enforcement efforts against both unlicensed, illegal carriers and permitted carriers not complying with our program;
5. How can CMSA, NMSA, NICMC, and the Commission work together to promote the best qualities within the industry;
6. Should all carriers be retested to retain operating authority after a fixed deadline given our new program;
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10. Should the carrier be subject to a penalty for failure to conduct the move on the date agreed for shipments weighing less than 5,000 pounds and/or transported less than 75 constructive miles. Should the

Commission specify the level of liquidated damages a carrier may assess a shipper if the shipper cancels an agreed-upon move without adequate notice;

11. Should the distance table (constructive miles) be abandoned, with maximum rates based on actual miles. Should carriers be allowed to charge based on hours for shipments over 50 miles;
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