

Decision 83 02 070 FEB 16 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of BEKINS MOVING & STORAGE CO.)
for authority to depart from the)
minimum rates, rules and regula-)
tions of Minimum Rate Tariff)
No. 4-B, pursuant to the)
provisions of Section 3666 of)
the Public Utilities Code.)

Application 82-02-49
(Filed February 19, 1982;
amended April 13, 1982)

Daniel W. Baker, Attorney at Law,
for Bekins Moving and Storage
Company, applicant.
Tad Muraoka, for IBM Corporation
and California Manufacturers
Association; Thomas J. Hays,
for California Moving & Storage
Association; and Alan
Edelstein, Attorney at Law, for
CA Teamsters Public Affairs
Council; interested parties.
Harry E. Cush, for the Commission
staff.

FINAL OPINION

By Decision (D.) 82-06-095 dated June 15, 1982 in this proceeding we authorized Bekins Moving and Storage Co. (Bekins) to deviate from the provisions of Minimum Rate Tariff (MRT) 4-B by offering binding estimates to residential shippers. The authority was granted by ex parte action. It was scheduled to expire on December 31, 1982; however, the expiration date was extended to March 1, 1983 by D.82-10-053, dated October 20, 1982.

The authorities granted by the above decisions were interim. During this period Bekins was to accumulate data reflecting the results of operations under its binding estimate program for presentation at full hearing on the application. Hearing was held on November 16, 1982 in San Francisco before Administrative Law Judge (ALJ) John Lemke, and the matter was submitted.

Bekins presented its evidence through Mr. William Perry, Administrative Assistant to the President and Director of Special Projects. No other party presented evidence. Cross-examination of the witness was conducted by IBM Corporation, California Moving and Storage Association (CMSA), California Teamsters Public Affairs Council (Teamsters) and the Commission staff.

Background

At the time Bekins filed its application, MRT 4-B, while containing rules for use by carriers desiring to engage in the practice of estimating, did not include rules which provided for binding estimates. That is, the MRT 4-B rules pertaining to estimating practices at that time authorized carriers to assess charges somewhat in excess of those quoted in the estimating documents. This was because the Commission had recognized the inherent difficulty in quoting precise charges. Thus a tolerance of 2-1/2% or \$15 over estimates on distance moves and 10% or \$15 over estimates on hourly (local) moves was recognized as reasonable and included in the nonbinding MRT 4-B estimating rules. The Bekins' binding estimate rules granted by D.82-06-095 were authorized as an interim alternate to the nonbinding MRT 4-B rules.

Bekins' Binding Estimate Service is a component of its three-part "NO EXCUSE MOVES" or "GUARANTEED SERVICE PROGRAM" begun in November 1980 on interstate shipments throughout the country. The first part of the program, "Guaranteed On-time Pickup and Delivery Service" was authorized by this Commission by D.93515, dated September 1, 1981 in Application (A.) 60726. Bekins has recently implemented the third phase of the program, "Full Value Protection." The full tripart program has been available on interstate moves originating or destined to California since November 1, 1980.

By D.82-07-083, dated July 21, 1982 in Case (C.) 5330, Petition 117, in response to the request of CMSA we included in MRT 4-B binding estimate rules comparable with those contained in the Bekins authority. These latter rules are scheduled to expire on July 20, 1983. The differences between the Bekins and MRT 4-B rules are (1) differences in rate levels and (2) the fact that MRT 4-B rules are subject to penalties for underestimating, while the Bekins rules are not subject to such penalties. Both the MRT 4-B and Bekins authorities are based upon rates, the loading and unloading portion of which apply on a cubic-footage basis. In addition to the cubic-footage charges mileage rates are applicable.

Bekins requests that its binding estimate rules be made permanent. In support of its request it asserts essentially as follows: Bekins wishes to offer it; the public wants it and accepts it; and there is no reason why it should not be made available.

Bekins argues that the public does not have to accept its binding estimate; however, there are many shippers who wish to know exactly what the total move will cost, and not merely an estimate plus an allowance of even 2-1/2%.

Bekins believes that the new labor contracts, paid in part on a cubic-footage basis, generate greater productivity than do labor contracts based upon hourly rates of pay; that workers engaged on an hourly basis work slower than those engaged on an incentive basis.

Counsel for Bekins in his closing argument expressed concern that if the company's binding estimate rules are not made permanent, it would be left with only the binding estimate provisions contained in MRT 4-B. These are due to expire on July 20, 1983. Bekins has no assurance that the MRT 4-B rules will be continued after that date and desires to exercise its own management prerogative both now and after July 20, 1983.

Evidence

Mr. Perry sponsored a study (Exhibits 8 and 9) comparing charges produced under Bekins Binding Estimate Service with those applicable under hourly or distance rates contained in MRT 4-B. The study covered 928 local moves and 242 distance moves, all performed during August and September 1982. The results of this study are portrayed in the following tables:

Table 1

COMPARATIVE SUMMARY OF PUC MINIMUM AND BEKINS BINDING
ESTIMATE (BE) CHARGES FOR LOCAL MOVES DURING TEST
PERIOD BETWEEN AUGUST 1, 1982 AND OCTOBER 1, 1982

	<u>Territory A</u>	<u>Territory B</u>	<u>Territory C</u>	<u>Total</u>
No. of Shipments	58	16	854	928
No. of Hours	315.00	83.50	4,912.25	5,310.75
No. of Cubic Feet	30,200	10,883	484,757	525,840
Cubic Feet/Crew Hr.	95.9	130.4	98.7	99
Av. Cube/Shipment	521	680	568	567
Total PUC Minimum	\$22,565.84	\$ 4,380.31	\$268,809.38	\$295,755.53
Total BE Charge	25,993.31	7,290.66	380,215.08	413,499.05
Over PUC Minimum	\$ 3,427.47	\$ 2,910.35	\$111,405.70	\$117,743.52
% Over Minimum	15.2%	66.4%	41.4%	39.8%

Table 2

COMPARATIVE SUMMARY OF PUC MINIMUM AND BEKINS BINDING
ESTIMATE (BE) CHARGES FOR DISTANCE MOVES DURING TEST
PERIOD BETWEEN AUGUST 1, 1982 AND OCTOBER 1, 1982

	<u>Within Region 1</u>	<u>Between Region 1 and Region 2</u>	<u>Total</u>
Total Shipments	210	32	242
Total Wgt. of Shipments	1,016,368	179,518	1,195,886
Av. Wgt. of Shipments	4,840	5,610	4,942
Total Cubic Ft. of Shpmts.	153,556	27,599	181,155
Av. Cubic Ft./Shipment	731	862	749
Av. Cubic Ft./Pound	6.6	6.5	6.6
Total PUC Min. Charge	\$196,708.25	\$31,969.70	\$228,677.95
Total BE Charges	254,711.48	38,532.72	293,244.20
Amt. BE Over PUC Chg.	\$ 58,003.23	\$ 6,563.02	\$ 64,566.25
% Over PUC Charge	29.4%	20.5%	28.2%

Perry testified that about 12-1/2% of the local moves shown in Table 1 and 9% of the distance moves shown in Table 2 were transported at charges somewhat below the charges applicable under MRT 4-B. He said this was due basically to initial inexperience on the part of personnel bidding and handling this new type of shipment. He stated, however, that the situation has already improved and that Bekins will be able to eliminate 98% or more of the underestimates.

Perry asserted that Bekins has not for many years, and does not expect in the future to assess rates below or even at the level of rates set forth in MRT 4-B. This is because Bekins' costs-- particularly labor and indirect costs--are higher than those experienced by most household goods carriers.

He also stated that about 50% of Bekins' California moves, including local and distance, are residential shipments and therefore subject to estimating practices.

The witness testified that since estimates are quoted on a time frame (cubic footage) basis, and labor charges are paid on that same basis, it is virtually impossible for Bekins to perform a move at a loss, if there has been an accurate estimate.

Perry stated that Bekins projects an increase in the company's total intrastate revenues during 1983 of about \$2 million principally because of its binding estimate program.

Mr. Hays of CMSA spent considerable time cross-examining the Bekins witness. He questioned the allegation that the service provided by Bekins is in the public interest, and wonders how it can be in the public interest for Bekins to assess greater charges than do other carriers. Mr. Muraoka of IBM and the staff echo Hays' concern.

Exhibit 10 contains a statement of Bekins' income and expenses and shows an operating ratio of 98.7 for the nine months ended September 30, 1982. Perry says this could worsen by as much as one percentage point by the end of 1982, since the last quarter of the calendar year is generally not as profitable as the other quarters. However, Perry stated that he fully expects Bekins' profit picture to improve, and hopefully will reflect an operating ratio of about 94.6 for 1983 assuming its business increases by about \$2 million and the company is allowed to continue with its binding estimates. Perry testified that if Bekins' deviation were made permanent he would be in favor of retaining the exception from the penalty provisions for underestimating. In those cases where Bekins' binding estimates were found to produce charges slightly lower than those applicable under MRT 4-B hourly or distance rates, Bekins has increased its rates over the levels authorized in its deviation in order to avoid such "underestimates."

Asked whether in his belief residential shippers require both the MRT 4-B and the Bekins' binding estimate rules, Perry stated he believes shippers need protection from underestimating practices. However, he saw no reason for dual authorities. He expressed concern, however, that the MRT 4-B binding estimate rules, scheduled to expire on July 20, 1983, will terminate at that time.

With respect to its deviation authority rule requiring that Bekins secure weight certificates on distance moves, Perry said that the integrity of the minimum rates could be preserved without that requirement because the goods to be transported are listed by the driver on an inventory at the time of loading. Each piece is itemized with a note regarding its condition.

In his closing statement Hays recommended that the Bekins authority not be made permanent because there is a rule in effect in MRT 4-B which satisfies Bekins' needs. Hays also pointed out that there is pending before the Commission a decision in C.5330, Order Setting Hearing (OSE) 100, addressing the issue of whether minimum rates are any longer appropriate for the household goods transportation industry in California. Hays believes that before the Bekins authority is granted permanently, the question of eliminating penalties for underestimating should be addressed in the OSE-100 proceeding. Hays also stated in his closing statement that it is the intent of CMSA to make the MRT 4-B binding estimate rules permanent, absent evidence indicating that such activity is not in the best public interest.

The staff recommends that the application be denied since the service has offered no reduction in charges to the public, and has, in fact, increased rates for the transportation of used household goods.

Discussion

The issues confronting us are:

1. Whether to grant Bekins' deviation on a permanent, or continuing, basis.
2. Assuming we grant the authority, should it be continued in its present form, i.e., exempt from penalties for underestimating and subject to the requirement of obtaining weight certificates on distance moves.

Bekins has traditionally assessed rates higher than those named in MRT 4-B. However, its witness acknowledged that the rate levels we approved by D.82-06-095 sometimes produce charges lower than minimum. And to insure that these "undercharges" do not recur, Bekins quotes and assesses rates higher than those specified in its deviation authority. Thus, although there are differences in the Bekins and MRT 4-B rate levels, the principal distinctions in the two authorities are in the rules, rather than in rates. Carriers applying MRT 4-B are subject to penalties for underestimating and must secure weight certificates on distance moves. Bekins' authority also requires that it secure weight certificates, but it is exempt from underestimating penalties.

If we were to grant the Bekins authority on a continuing or permanent basis, it would be necessary to amend its authority every time the rates in MRT 4-B were increased. Otherwise Bekins' binding estimate rates would produce charges less than those named in MRT 4-B, and the disparity between those rate levels would increase each time the MRT 4-B rates increased. The requisite filings and staff analyses would involve an unnecessary administrative burden—unnecessary because the authority Bekins seeks is currently contained in MRT 4-B.

The MRT 4-B rules authorizing binding estimates are scheduled to expire on July 20, 1983. Hays stated it is CMSA's intent to make those current rates and rules permanent. If CMSA chose not to carry through with that purpose, Bekins or any other party may file its own petition requesting that the MRT 4-B provisions be continued.

Should Bekins determine that the MRT 4-B binding estimate rate levels produce insufficient revenues for its high cost operation, it may simply assess higher rates. It already does this in connection with its deviation authority.

After consideration of the evidence and circumstances, we will deny Bekins' request for continuation of its interim authority beyond March 1, 1983. Were it not for the fact that essentially the same provisions are available to Bekins in MRT 4-B, we would decide otherwise. However, we can see no merit in maintaining two virtually identical authorities, both usable by the same carrier.

In denying Bekins' request we are mindful that it will be operating under the estimating rules of MRT 4-B after March 1, 1983. This means, inter alia, it will be subject to penalties for underestimating. The likelihood of Bekins' underestimating, however, is minimal, in light of Perry's testimony.

With respect to the requirement that weight certificates be secured on distance moves, we are impressed with Perry's testimony that minimum rates can be properly enforced and protected by an inspection of shipping documents which list each item shipped. The need for continuation in MRT 4-B of both underestimating penalties and weight certificates on shipments involving binding estimates should be considered by staff and other interested parties in proceedings later this year which address the need for permanent binding estimate provisions.

Findings of Fact

1. By D.82-06-095 dated June 15, 1982 we authorized Bekins to implement its Binding Estimate Service program in California on an interim basis. The authority was originally scheduled to expire on December 31, 1982, but was extended to March 1, 1983.

2. By D.82-07-083 dated July 21, 1982 we established provisions in MRT 4-B comparable to those set forth in the Bekins authority. These provisions are scheduled to expire on July 20, 1983.

3. In connection with shipments involving binding estimates, Bekins may apply either the provisions of its individual authority or those contained in MRT 4-B.

4. Bekins' witness testified that in his opinion there is no need for the dual authorities.

5. A representative of CMSA has informed the Commission that it intends to request that the provisions of MRT 4-B authorizing binding estimates be made permanent.

6. It would be administratively cumbersome for the Commission to maintain both the MRT 4-B and Bekins authorities relating to binding estimates.

Conclusions of Law

1. No useful or necessary purpose would be accomplished by maintaining both the MRT 4-B and individual Bekins authorities relating to binding estimates.

2. The request of Bekins to make permanent the interim authority granted by D.82-06-095 and D.82-10-053 should be denied.

FINAL ORDER

IT IS ORDERED that the request of Bekins Moving & Storage Co. for authority to deviate from the provisions of MRT 4-B is denied. This order becomes effective 30 days from today.

Dated FEB 16 1983 at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
Commissioners

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

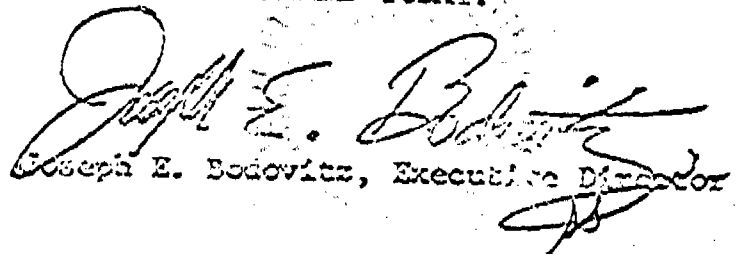

Joseph E. Bodovitz, Executive Director

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