

ORIGINAL

Decision 83 03 049 March 16, 1983

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's )  
own motion into the operations, )  
rates, and practices of Peeters )  
Transportation Co., Inc., a )  
California corporation, )  
Respondent. )

OII 82-08-02  
(Filed August 18, 1982)

Daniel W. Baker and Raymond Greene, Attorneys  
at Law, for Peeters Transportation Co.,  
Inc., respondent.  
Javier Plasencia, Attorney at Law, and  
W. J. Anderline, for the Commission  
staff.

O P I N I O N

This is an investigation on the Commission's own motion into the household goods operations, rates, and practices of Peeters Transportation Co., Inc. (respondent), a California corporation, for the purpose of determining the following:

- (1) Whether respondent has violated Sections 5193, 5197, and 5245 of the Public Utilities Code by failing to comply with the estimating and documentation rules set forth in Items 31, 31.1, and 32 of Minimum Rate Tariff 4-B.
- (2) Whether respondent has charged and collected more than the maximum charges applicable.
- (3) Whether respondent should be ordered to pay to the shipper the difference between the charges collected and the maximum charges applicable under the aforementioned tariff provisions.
- (4) Whether respondent should be ordered to cease and desist from any and all unlawful operations and practices.

- (5) Whether the operating authority of respondent as a household goods carrier should be canceled, revoked, or suspended, or as an alternative, whether a fine should be imposed pursuant to Section 5285 of the Public Utilities Code.
- (6) Whether any other order or orders that may be appropriate should be entered in the lawful exercise of the Commission's jurisdiction.

A hearing was held before Administrative Law Judge Pilling in San Francisco on October 21, 1982, and the matter was submitted on briefs.

Scope of Investigation

At the hearing the scope of the investigation was centered on the circumstances surrounding the documentation and transportation of a shipment of used household goods in 1981 from Sausalito to Santa Monica, with storage in transit enroute, by respondent for Mr. Heinz Studer (Studer) and/or Intertrade Management, Inc. (Intertrade), a company of which Studer is sole owner.

The Principal Issue

The principal issue is which of two written estimates was given by respondent to Studer: the lower of the two estimates which Studer claims respondent gave to him and respondent denies giving to Studer, or the higher of the two estimates which respondent claims it gave to Studer and which Studer denies receiving.

Tariff Considerations

The for-hire movement of used household goods is governed by Minimum Rate Tariff (MRT) 4-B. (All tariff references in this decision will be to MRT 4-B.)

Item 31 provides that a carrier may give a prospective shipper an estimate of the probable cost to the shipper of the carrier's services for which the shipper requests an estimate. If an estimate is given, it must be given in writing on a completed document entitled a Probable Cost of Service (PCS), must be signed by the carrier, and must be given to the prospective shipper. The PCS must state that it is not a contract. There is no requirement that the PCS be signed by the prospective shipper.

Item 31.1 provides that the carrier may not collect a maximum total charge in excess of that which appears on the PCS plus 2-1/2% where distance rates are involved and 10% where hourly rates are involved, plus the charges listed on the Addendum Order for Service (addendum) if any is issued. (See Item 33.5 for description of the addendum.)

Items 32 and 33 provide that the PCS must be based on a completed document entitled Basis for Carrier's Probable Cost of Services (BPCS) which contains a list of services requested by the prospective shipper and an inventory of the pieces comprising the shipment. The BPCS must be signed by the prospective shipper and a copy given to him along with the PCS.

Item 33.5 provides that where a shipper or prospective shipper requests additional services or adds additional articles to a shipment not listed on the BPCS, the carrier must issue an addendum setting forth the additions and the charges for them. The addendum must be issued and signed by the shipper or prospective shipper prior to the carrier undertaking the new service.

Items 130, 400, and 410 provide that a Freight Bill shall be issued by the carrier to the shipper and signed by the shipper for each shipment received by the carrier. Item 130 requires that the Freight Bill show whether a PCS has been issued to cover the shipment.

Item 155 provides, in part, as follows:

- "(1) When a Probable Cost of Services Document is issued, the charges shall be determined under the provisions of Items 31, 31.1, 32, 33, 33.5, and 33.7 of the tariff."

Item 180 allows a shipment to be stored in transit for up to 60 days. This item requires that when a shipment remains in storage in transit over 60 days, the point of storage is to be considered the point of destination of the shipment and that charges for subsequent delivery shall be assessed on the basis of the charges applicable from point of storage to point of delivery.

Respondent's Profile

Respondent was issued a household goods carrier permit on July 2, 1964, a highway contract carrier permit on July 1, 1964, and a highway common carrier certificate on April 30, 1980. Commission records show that respondent was served, pursuant to its subscription, MRTs 1-B, 2, 4-B, 9-B, 11-A, 15, 19, ERT 1, and DT 8. Respondent operates five tractors, three van trucks, six van trailers, and one flat-bed trailer. For the 12 months ended December 31, 1981 respondent had gross operating revenue of \$599,684. In Decision (D.) 92276 dated October 8, 1980, the Commission found respondent had overcharged five of its shippers because of irregularities in its estimating procedures. In the same decision the Commission absolved respondent from charges that it had overcharged each of six other shippers.

Studer's Testimony

Studer testified that sometime in July 1981, he informed respondent that he had a potential household goods move from his home in Sausalito to "the Santa Monica area" and requested respondent to send someone to his home to estimate the charges for the move. On July 13, 1981 respondent's salesman-estimator Bob Adkins (Adkins) and

Studer met at Studer's home where Adkins discussed the move with Studer and looked over the pieces comprising the proposed shipment. Studer claimed that the only PCS Adkins gave Studer before Adkins left that day was a PCS dated July 13, 1981 showing the valuation of the shipment to be \$10,000 and the probable cost for handling the shipment from Sausalito to the Santa Monica area, including storage in transit, as follows:

Local moving	\$ 603.32
Storage - "1st month"	255.88
Long distance moving	846.48
Packing and unpacking	<u>298.75</u>
Total Probable Cost	\$2,004.43

A photocopy of the PCS, signed by Adkins, was introduced into evidence at the hearing by Studer (Exhibit 1, Document 19). Studer claimed he lost the PCS shipper's copy from which the photocopy was made sometime after he made the photocopy in the latter part of 1981. Studer also introduced into evidence a copy of the Freight Bill (Exhibit 1, Document 20), signed by Studer, covering the move from Sausalito to respondent's warehouse in San Francisco. The Freight Bill shows the shipment was picked up July 17, 1981. The Freight Bill also indicates that no PCS was issued covering the shipment.

Studer denies he was ever given a BPCS or a revised PCS. He claimed that the first time ever he saw the revised PCS was at this hearing when it was put into evidence by respondent (Exhibit 7). He also denies he was given a document entitled Important Notice to Shippers of Household Goods until his shipment was delivered in Santa Monica, though Exhibit 2 shows that he receipted for it on July 13, 1981.

Studer testified that on July 17, 1981, shortly after respondent's crew arrived at his house to load the shipment, he departed on a trip to Europe and left behind a friend to close up his house.

Respondent's Work Order No. 36736 (Exhibit 1, Document 30) has a note on it that Studer's wife called respondent on September 14, 1981 and said her husband would return to this country on September 17 or 18, 1981 and that as soon as he returned she would have Studer call respondent.

Sometime after he returned from Europe, Studer contacted respondent and requested that the move to Santa Monica be completed. It was during this contact that Studer was informed by respondent that the total charges for the move would be in excess of \$3,000. Studer testified that he immediately remonstrated with respondent about being charged so greatly in excess of the PCS he had been given by Adkins and asked to talk to Adkins to verify Studer's contentions, but he was refused access to Adkins.

As matters turned out, Studer was able to get his shipment delivered in Santa Monica by paying a total of \$2,555.55 for the complete move and storage. The Freight Bill of the delivering carrier (Exhibit 1, Document 31) shows that the balance owing on the move was zero.

Studer stated that he was the sole owner of Intertrade and that he could not remember if he paid respondent the down payment on the move by check drawn on Intertrade's account or on his own personal account.

Studer did not contend that his differences with respondent just prior to the move to Santa Monica caused his shipment to remain in storage in transit an excessive length of time.

Results of Staff Investigation

By letter dated October 9, 1981 Studer filed an informal complaint with the Commission concerning the alleged excessive charge for the move. As a result of the letter, an investigator from the Commission's Transportation Compliance Section visited Peeters and asked to see Studer's file. Upon being given Studer's file, the investigator made copies of all the documents in Studer's file. These copies were admitted into evidence as part of Exhibit 1 and are designated in the exhibit as Documents 28 through 32. They may be described as follows:

28. Work Order #36436.
29. Freight Bill #7949 covering Sausalito to San Francisco move.
30. Work Order #36736.
31. Freight Bill #8114 covering San Francisco to Santa Monica move.
32. Addendum for \$197.03 and increase of \$5,000 in valuation of shipment.

The investigator testified that during his visit to respondent he asked if he could talk to Adkins but was told by Fred Peeters (Peeters), the Chief Executive Officer of the company, that Adkins was no longer in the employ of respondent.

After the investigator left respondent's premises, the staff and Peeters engaged in a lengthy series of correspondence. The staff advised Peeters that in the staff's opinion respondent had overcharged Studer \$258.73 and that unless respondent remitted this overcharge to Studer the staff would recommend to the Commission that a formal investigation into the matter be instituted. Peeters then sent to the staff photocopies of certain documents later admitted into evidence as part of Exhibit 1 and designated in that exhibit as Documents 23 through 26. Each of these documents had reference to the move in question. Those documents were:

23. BPCS dated July 13, 1981 unsigned by Studer.
24. PCS. A duplicate of Document 19 of Exhibit 1 but with the words "Void See Revised Est" written diagonally across the face of the PCS.
25. Inventory.
26. "Revised" PCS dated July 13, 1981 showing total probable cost to be \$2,719.78 and the valuation of the shipment to be \$15,000. The revised PCS was signed by Adkins. A handwritten note at the top of the revised PCS read:

"Mr. Studer - per your request  
Budget Figures for Inter Trade  
Mgmt

"RCA

"SPD Advised - no parking."

The revised PCS indicated that the move was to be charged to Intertrade. The revised PCS appears to be written by the same person who wrote the PCS.

Under letter dated March 23, 1982 to the Commission (Exhibit 1, Document 10), prior to the issuance of the Order Instituting Investigation (OII), Peeters offered to do the following:

"If you would be so kind as to request that Mr. Studer produce his ORIGINAL copy, not a photocopy, we will acknowledge the estimate and immediately forward our check to cover the amount of the overcharge."

When no original copy was furnished, Peeters continued to refuse to remit the alleged overcharge.

A Senior Transportation Rate Expert for the staff introduced calculations which showed the maximum charges, including allowable tolerances, which respondent would be permitted to charge Studer assuming the PCS and AOS were found to be applicable to the move (Exhibit 4). The Rate Expert assigned an allowable tolerance of



10% to the probable cost of the local move and 2-1/2% to the probable cost of all other services, including packing/material service listed in the PCS. Following is a summary of his calculations:

PCS amount	\$2,004.43
10% of PCS (\$603.32)	60.33
2-1/2% of PCS (\$1,401.11)	35.03
AOS	<u>197.03</u>
	\$2,296.82
(Refund to shipper \$2,555.55 - \$2,296.82)	\$ 258.73

The staff contends that respondent knowingly altered respondent's copies of the PCS by writing "Void See Revised Est." across the face of the copies and knowingly presented a false revised PCS to justify charging a greater rate than on the PCS. The staff recommends that respondent be ordered to refund overcharges in the amount of \$258.73 to Studer and that respondent be fined \$2,000 because of its flagrant action of fabricating documents and because of respondent's prior violations.

Peeters' Testimony

Peeters testified on behalf of respondent. He denied that the PCS had been given by Adkins to Studer but could not account for Studer having had a copy of the PCS, or a photocopy of it, and could not account for the fact that there was no shipper's copy of the PCS in respondent's file. He testified that he believed that a revised PCS, as evidenced by Document 26 of Exhibit 1, had been given by Adkins to Studer prior to the shipment being packed. He attributed the revised PCS being made up to the fact that Adkins found out that Studer was unable to arrange for parking respondent's van near Studer's house, as originally planned, and, as a consequence,

Studer's shipment would have to be shuttled in small lots between Studer's house and a van which would have to be parked some distance from the house, thus increasing the local moving costs. He stated that Studer's shipment moved into storage in transit on July 17, 1981 and moved out of storage in transit on September 21, 1981.

Peeters contends that Studer still owes respondent \$568.30, which is the difference between the \$2,555.55 Studer has paid and the \$3,123.85 representing the revised PCS, the AOS, and the additional storage. He stated that Adkins left the employ of respondent a week-and-a-half before the hearing because Adkins' wife had come down with cancer and had to be confined to a hospital.

Peeters denied having told the staff investigator, during the latter visit, that Adkins was no longer in the employ of respondent, but, rather, that Adkins was on vacation. He stated that Documents 23 through 26 of Exhibit 1 were not in the Studer file because they were in a file under the name Intertrade. The investigator had only asked for the Studer file and it was only later discovered that documents pertaining to the move were filed under Intertrade's name.

Respondent takes issue with the way the Commission Rate Expert applied the allowable tolerances. Respondent contends that 2-1/2% allowable tolerance should apply only to the charge for the long distance moving from San Francisco to Santa Monica and that the 10% allowable tolerance should apply to all other charges, such as packing/materials, storage, and local moving. Calculated in this manner, the maximum allowance charges under the PCS would be \$2,566.15, which amounts to \$10.60 in excess of the \$2,555.55 paid by Studer. If the revised PCS is found to apply, the maximum allowable charges under this method of calculation would be \$3,351.17, which is \$795.62 in excess of the \$2,555.55 paid by Studer.

Respondent also takes issue with the Rate Expert's use of only one month's storage charge in calculating the maximum allowable charge under the PCS. The section of the PCS where storage charges are required to be entered has a preprinted heading which states "ESTIMATED RATE PER MONTH". The monthly storage charge of \$91.52 was filled in and this should have apprised the shipper that storage charges would be assessed depending upon the length of time the shipment was in storage. The shipper determines how long he wants to leave the shipment in storage. In this case the shipment was stored long enough to accumulate three month's storage charges.

Discussion

To be effective the PCS must be given to the shipper (Item 31(2)(a)). The only eyewitness testimony we have in the record of a PCS being given, or not being given, to Studer is the testimony of Studer. He testified the PCS was given to him and that the revised PCS was not given to him. Unfortunately, the testimony of Adkins, the only other eyewitness to the transaction, was not presented either in person or by deposition. Hence, the weight of the evidence favors a finding that the PCS was given to Studer and the revised PCS was not given to Studer. The fact that Studer produced a photocopy of the PCS which lacked the cancellation note and the fact that respondent was unable to produce the shipper's copy of the PCS fortifies this finding. Furthermore, the first time Studer found out he was to be charged in excess of the PCS, when his goods were still in storage, he lodged a protest with respondent at being made to pay the excess charges and asked to speak to Adkins in an effort to clear up the matter. His willingness to confront Adkins over the difference in the charges to clear up the matter at once shows a firm belief in the justness of his stand. We affirm that stand.

However, we believe there is insufficient evidence to justify upholding the staff's contentions that the revised PCS and attempted cancellation of the PCS was a coverup to justify charging a rate greater than shown on the PCS. The documents on their face indicate an attempt to cancel a PCS and issue a revised PCS on July 13, 1981, which, in and of itself, would not be a wrongdoing. There is no evidence that the revised PCS was made up at a time other than the date shown on the revised PCS.

Peeters testified he believed the revised PCS had been given to Studer. This belief may have been fostered by sloppy internal company practices but there has been no showing that known false billing or other illegal devices were involved. Hence, respondent is not guilty of violating Public Utilities (PU) Code § 5197.

Respondent raises the issue of the effect, if any, of Item 180 - Storage in Transit when the time of storage of a shipment moving under a PCS is in excess of 60 days. Item 180 provides that "when a shipment remains in storage in excess of 60 days, the point of storage in transit shall be considered the point of destination...". Studer's shipment remained in storage in excess of 60 days. If the quoted provision of Item 180 is applicable, then the packing/material probable cost of \$298.75 is subject to an allowable tolerance of 10% rather than 2-1/2% since that cost would have been incurred in connection with the local move from Sausalito to San Francisco. We believe Item 155 governs the situation. Item 155 provides that when a PCS is issued the charges shall be determined under the provisions of Items 31, 31.1, 32, 33, 33.5, and 33.7. Hence, Item 180, which is not mentioned in Item 155, cannot operate to increase the charges, including the maximum allowable charges assessed in connection with a movement under a PCS. Since the

packing/material cost was incurred in anticipation of a long distance move, which actually was accomplished as anticipated, the allowable tolerance for packing/material was correctly calculated by the staff using the 2-1/2% figure.

We think respondent's objection to the staff's use of only one-month storage charge in calculating the maximum allowable charge is well taken. The shipment remained in storage two months and seven days. Storage started July 17, 1981 and lasted through September 21, 1981. As we indicated in the recital of evidence, the storage charge of \$91.52 appeared on the PCS under the preprinted heading "ESTIMATED RATE PER MONTH". In addition, the summary of charges on the PCS indicated the total storage charge was only for the "1st month". Hence, Studer was apprised of what the storage charge would be for each month or fraction of a month if he left his shipment in storage.

Apparently, Studer, at the time the PCS was made out, was unsure how long he wanted his goods to remain in storage, for the PCS indicated that the requested delivery date in Santa Monica was to be in "1 or 2 mo's". Rightly, respondent should have issued and had Studer sign an AOS just prior to the commencement of the second and third month's storage. However, Studer was either out of the country or unavailable at those times to sign an AOS. Item 33.5 requires that for an AOS to be effective, it must be issued and signed by the shipper prior to the commencement of additional services. In this case, respondent had the goods in his warehouse and he could do nothing but let them remain there until he received word from Studer. It would be unfair to the respondent not to let it collect its warehouse charges where, in these circumstances, the shipper is unavailable to sign an AOS. Hence, the staff should have used three months' storage-in-transit charges in calculating the maximum allowable charges as follows:

PCS amount	\$2,004.43
2-1/2% of PCS (\$1,401.11)	35.03
10% of PCS (\$603.32)	60.33
AOS	197.03
Two-month storage in transit	<u>183.04</u>
	\$2,479.86
(Refund to shipper \$2,555.55 - \$2,479.86)	\$ 75.69

The staff premised, in part, its request for the imposition of a fine in the amount of \$2,000 on respondent's alleged fabrication and falsification of documents. Since we find such allegations to be unproven, we think a fine of \$2,000 is excessive and that a fine of \$500 is reasonable under the circumstances. This case represents the sixth incident in a little more than four years (D.92276 represents the previous five incidents) where respondent violated the estimating procedures and overcharged one of its customers. In this case, respondent's failure at any time to bring into the controversy the elusive Adkins, the only respondent employee who had first-hand knowledge of the situation and concerning whose actions the whole claim evolved, inordinately prolonged the controversy and caused Studer much unnecessary time and trouble. We think that a forfeiture of \$500 on the part of respondent will awaken respondent to the necessity of keeping better records and improving the efficiency of its claim handling.

Findings of Fact

1. At all times respondent held a permit to engage in and did engage in for-hire operations as a household goods carrier and subscribed to the minimum rate tariff governing such operations.

2. Sometime in July 1981 Studer informed respondent that he had a potential household goods move from his home in Sausalito to the Santa Monica area and asked respondent to send someone to his home to estimate the charges on the move.

3. On July 13, 1981, in response to Studer's call, respondent sent its employee Adkins to the Studer residence.

4. Before leaving the Studer residence on July 13, 1981, Adkins, on behalf of respondent, issued to Studer the PCS represented by the photocopy identified as Exhibit 1, Document 19 covering the proposed move with storage in transit.

5. The total probable cost on the PCS was \$2,004.43.

6. The total probable cost on the PCS was calculated to include only one month storage charge.

7. An AOS for \$197.03 was duly issued.

8. The proposed shipment was picked up July 17, 1981 and put into storage in transit that day.

9. On the date of the pickup of the shipment, Studer left on a trip to Europe and did not further communicate with respondent until after his shipment had remained in storage for over two months.

10. Shortly after he left for Europe, Studer had his house in Sausalito closed up.

11. The shipment was finally delivered in Santa Monica on September 25, 1981.

12. In order to obtain delivery of the shipment, Studer was required to pay respondent \$2,555.55 for the entire move and storage.

13. The maximum allowable charge which respondent was permitted to collect from Studer was \$2,479.86, which included three month's storage charges.

14. Respondent overcharged Studer \$75.69.

15. Respondent failed to obtain Studer's signature on the BPCS.

16. The BPCS was never given to Studer.

17. Respondent attempted to cancel the PCS and issue the revised PCS on July 13, 1981.

18. The revised PCS was never given to Studer.

19. Respondent did not knowingly use an illegal device in assessing the charge in excess of that shown on the PCS.

Conclusions of Law

1. Respondent violated PU Code §§ 5193 and 5245 by failing to comply with the estimating rules set out in Items 31, 31.1 and 32.
2. Respondent charged Studer and collected from Studer \$75.69 more than the maximum charge applicable to the shipment.
3. Respondent should be ordered to pay Studer the overcharge of \$75.69.
4. Respondent did not violate PU Code § 5197.
5. Respondent should be ordered to cease and desist from any and all unlawful operations and practices.
6. A fine of \$500 should be imposed on respondent under PU Code § 5285 for violations of PU Code §§ 5193 and 5245 in lieu of canceling or suspending respondent's operating authority.

O R D E R

IT IS ORDERED that:

1. Peeters Transportation Co., Inc. (respondent) shall pay a fine of \$500 to this Commission pursuant to PU Code § 5285 on or before the 40th day after the effective date of this order. Respondent shall pay interest at the rate of 7% per annum on the fine; such interest is to commence upon the day the payment of the fine is delinquent.
2. Respondent shall refund overcharges in the amount of \$75.69 to Heinz Studer no later than 60 days after the effective date of this order.
3. Within 15 days after the maximum time for payments set out in Ordering Paragraph 2, respondent shall notify the Commission of its action taken in respect to such payments.



4. Respondent shall cease and desist from any and all unlawful operations and practices.

This order becomes effective 30 days from today.

Dated MAR 16 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.  
President

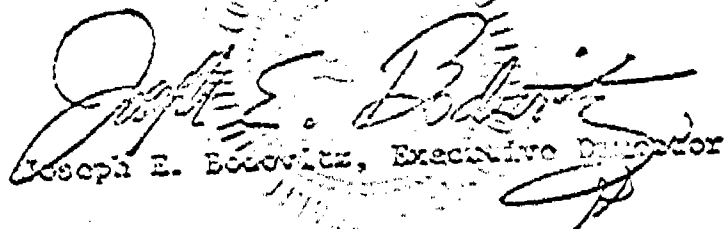
VICTOR CALVO

PRISCILLA C. GREW

DONALD VIAL

Commissioners

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

  
Joseph E. Bercowitz, Executive Director

ORIGINAL

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