

Decision 83 05 033 May 4, 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation)
for the purpose of considering and)
determining minimum rates for)
transportation of used household)
goods and related property statewide)
as provided in Minimum Rate Tariff)
4-B and the revisions or reissues)
thereof.)

Case 5330, OSH 100
(Filed April 12, 1977)

And Related Matter.

Case 5432, OSH 958
(Filed April 12, 1977)

(For appearances see Appendix A.)

INTERIM OPINION

The captioned proceedings were initiated in order to receive evidence regarding whether the Commission should establish a regulatory program whereby carriers would establish rates and initiate changes in rates with respect to the movement of uncrated used household goods, personal effects and office, store and institutional furniture, fixtures, and equipment (household goods). Minimum rates for such transportation are contained in Minimum Rate Tariff 4-B (MRT 4-B).

Public hearings in Order Setting Hearing (OSH) 100, Case (C.) 5330 et al. were held in Sacramento, Fresno, San Diego, San Francisco, and Los Angeles during the period April 4, 1981 through October 29, 1981, and the proceedings were submitted upon receipt of briefs, which have been filed.

Both the Commission's Transportation Division staff (TD staff) and the Commission's Consumer Affairs Branch staff (CAB staff)

developed reregulation proposals regarding MRT 4-B transportation. California Moving and Storage Association (CMSA) also submitted a rate proposal in the proceedings. ✓

The TD Staff Proposals

The TD staff advanced both a primary and an alternate reregulation proposal for MRT 4-B transportation. Under the primary TD staff proposal, MRT 4-B would be canceled. In its place, a new "standard rate" tariff (SRT) would be published by the Commission. This SRT would contain rules and rate structures quite similar to those now contained in MRT 4-B. SRT rates would be initially set at the MRT 4-B level existing at the time it was canceled. However, under the provisions of the SRT, household goods carriers would be free to quote and assess levels of rates varying anywhere from 15% below to 15% above the rates published therein.

Like the rates in MRT 4-B, the rates published in the proposed SRT could be adjusted periodically to reflect changes in cost of service. Such changes would be accomplished for SRT rates through the use of the Consumer Price Index.¹ Changes in this index would serve as proof of changes in cost of service and, therefore, as proof of the need for changes in SRT rates.

Under the alternate proposal advanced by the TD staff, MRT 4-B would also be canceled. No Commission rates for household goods would be published to fill the void left by its elimination. Those rules now contained in MRT 4-B that serve to protect consumers in their dealings with household goods carriers would be retained. They would be published in a new general order issued by the Commission.

The TD staff indicated that it wished the Commission to consider this alternate proposal only if the TD staff primary proposal were found to be an unacceptable substitute to the present minimum rate program.

¹ Published by the U.S. Department of Labor, Bureau of Labor Statistics.

The CAB Staff Proposal

The CAB staff advanced a single MRT-4B reregulation proposal. Under its program, MRT 4-B would be canceled and household goods carriers would be required to assess exact, individually developed rates filed with the Commission.

Such rates could be changed as often as twice a year, and would be subject to critical analysis only upon complaint filed under the provisions of Rule 9 of the Commission's Rules of Practice and Procedure. In such circumstances, a carrier would then be compelled to cost-justify the rate(s) at issue, using a Commission-developed prevailing labor cost standard, rather than the actual labor cost it incurred.

Like the alternate program advanced by the TD staff, the CAB staff's reregulation program would provide for the continuation of current MRT 4-B consumer protection rules through the issuance of a Commission general order.

The Evidence submitted by CMSA

CMSA proposed that MRT-4B be retained, and that the rates therein be updated. It submitted cost evidence in support of an update of MRT 4-B rates.

CMSA was critical of the reregulation programs advanced by both the TD staff and the CAB staff. It voiced particular concerns over the fundamental workability of the staff programs. Throughout the proceeding, CMSA took the position that deregulation would be preferable to the industry if the alternative was to operate under one of the reregulation schemes advanced by the staff.

Discussion

Household goods transportation service differs substantially from the transportation of general commodities because of the relative unsophistication of the shippers involved. Most shippers of general commodities are frequent users of transportation and are able to effectively negotiate rates with carriers seeking to

serve them. On the other hand, household goods shippers are most often householders who infrequently make use of carrier services.

Historically, the Legislature has recognized the vulnerable position of householder-shippers and has acted to protect their interests. Over time, it has added the following sections to the Public Utilities Code:²

"5138. The commission shall establish rules and regulations governing the notification of shippers of any delay in the delivery of goods beyond the date agreed to by the carrier and the shipper, if any, at the time the service was undertaken. All household goods carriers shall observe such rules and regulations and the failure so to do is unlawful. (Added 1963, Ch. 1826.)

"5139. The commission may establish rules for the performance of any service of the character furnished or supplied by household goods carriers. Every household goods carrier shall observe such rules. Failure to do so is unlawful. (Added 1971, Ch. 1393.)

"5245. The commission shall establish rules and regulations controlling the estimates given by a household goods carrier to a shipper of the charges it would make to perform services covered by this chapter. All household goods carriers shall observe such rules and regulations and the failure so to do is unlawful. The commission shall make such rules and regulations as are necessary to the application and enforcement of rules and regulations established pursuant to this decision. (Added 1963, Ch. 1826.)"

Through the application of minimum rates, and through the rules surrounding their use, we have diligently exercised the authority conferred upon us by these statutes to ensure the equitable treatment of the householder-shipper. Any regulatory program we adopt in the future for transportation now subject to MRT 4-B must allow us to continue to do so.

² No other permitted class of motor carrier within our jurisdiction is subject to statutory constraints of this nature.

While the various programs proposed by the staff are radically different in concept from each other and from the current minimum rate program, each attempts to provide for the maximum degree of consumer protection oversight possible in an atmosphere of broadened downward carrier pricing freedom.³ As evidenced by the fact that we continue to encourage the filing of cost supported deviations, we appreciate the need for a measure of such freedom. However, the evidence presented during these proceedings has raised practical questions that render us unable to adopt a program advanced by either the TD or CAB staff.

There is little evidence in the record that would indicate that there is public support for any of the reregulation programs presented by the staff. On the other hand, there is extensive evidence that each staff program lacks the support of the moving industry. Additionally, the record in these proceedings was developed nearly two years ago. Subsequent actions by the Commission have altered the regulatory framework addressed at those hearings. These actions have also addressed some of the key consumer protection issues which triggered our staff's reregulation proposals in the first instance.

Most significantly, by Decision (D.) 82-07-083 issued July 21, 1982 in Petition 117 in C.5330, we modified MRT 4-B to allow the moving industry to offer a guaranteed price to householders who seek its services. For the first time since the inception of household goods minimum rate regulation, the opportunity exists for a California householder to obtain full and prior knowledge of the

³ To the extent that the CMSA proposal to maintain minimum rate regulation also constitutes a recommendation to continue (1) those MRT 4-B rules we have established to protect the householder-shipper, and (2) the opportunity for carriers to obtain authorization to deviate from minimum rates, it too is an attempt to provide consumer protection combined with a degree of downward pricing freedom.

total price to be paid for the services of a mover and, therefore, to obtain complete consumer pricing protection.

The MRT 4-B modifications implemented by D.82-07-083 are of a temporary nature. They are scheduled to expire July 20, 1983. Before that date, however, we have directed that a hearing be held in which the impact of these modifications will be reviewed to determine whether it is advisable to make the modifications permanent. During this hearing, the question of whether any further modification of the consumer protection rules contained in MRT 4-B is required can be explored in the context of contemporary transportation conditions. However, we intend to confine such hearings to issues associated with the consumer protection provisions of MRT 4-B, since our decision today rejects the reregulation proposals contained in the record before us, in effect affirming the minimum rate provisions of MRT 4-B.

In the circumstances, we conclude that the investigation in OSH 100 in C.5330 and the related proceeding, OSH 958 in C.5432, should be discontinued. The Commission does not believe it is advisable to launch the household goods industry on a deregulatory path under present circumstances.

Considering that we are ordering continuation of the basic regulatory framework for transportation of commodities included in MRT 4-B, we must state our concern that the data underlying the rates in MRT 4-B are based largely upon carrier operations conducted at least a decade ago.⁴ Continued use of these data is certain to generate controversy due to the distortions which inevitably take place over time as methods of operation and equipment types change. CMSA's presentation in this proceeding has identified the need for

⁴ The last full scale cost and performance studies of MRT 4-B distance rated transportation were conducted in 1974, while such studies of MRT 4-B hourly rated transportation were last conducted in 1967.

updating this data as well as developing alternate methodologies for setting minimum rates. We therefore direct the staff to work with the interested parties to review the present and alternative methodologies for calculating minimum rates, and present us with sufficient updated information to enable us to address the need for developing a new methodology, if warranted. In the meantime we direct the staff to work with

interested parties to conduct studies for the purpose of developing fresh cost and performance data for MRT 4-B rates. A number of parties appearing in these proceedings and in other MRT 4-B proceedings, particularly CMSA, have demonstrated an ability to participate in, and contribute to, this type of study and we encourage the staff to take full advantage of these resources.

Findings of Fact

1. MRT 4-B specifies minimum rates, charges, and rules relative to the movement of uncrated used household goods, personal effects and office, store and institutional furniture, fixtures, and equipment (household goods).

2. During the period April 4, 1981 through October 29, 1981 the Commission held public hearings in the captioned matters to consider modification of MRT 4-B minimum rates, charges, and rules, including establishment of carrier-filed rates (reregulation proposals).

3. The Commission's TD staff and CAB staff presented the following reregulation proposals during these public hearings:

- a. Under TD staff's primary proposal, MRT 4-B would be canceled, to be replaced by a standard rate tariff containing initial rates based on MRT 4-B levels existing at the time of cancellation. Carriers could assess rate levels varying anywhere from 15% below to 15% above SRT published rates. Such published rates could be adjusted periodically via the Consumer Price Index to reflect changes in cost of service.
- b. Under TD staff's alternate proposal, MRT 4-B would be canceled, with no replacement tariff to fill the rate regulation void. MRT 4-B consumer protection rules would be retained in the form of a new general order to be issued by the Commission.
- c. Under CAB staff's proposal, MRT 4-B would be canceled, its rate provisions to be replaced by individually developed rates filed with the Commission; MRT 4-B consumer protection

rules would be retained in the form of a new general order to be issued by the Commission.

4. The goal of the staff reregulation proposals was to present a plan for the Commission's consideration, designed to provide for the maximum degree of consumer protection oversight in an atmosphere of broadened downward carrier pricing freedom.

5. The CMSA also submitted cost and other evidence in support of its position that MRT 4-B be retained, but that MRT 4-B rates be updated.

6. Subsequent to the submission of this proceeding, the Commission modified MRT 4-B to allow the moving industry to offer a guaranteed price to householders seeking its services. (D.82-07-083 issued July 21, 1982 in Petition 117 in C.5330.)

7. The Commission will address the question of making the D.82-07-083 consumer protection modifications permanent in hearings to be held before the applicable July 20, 1983 expiration date.

8. Carriers are encouraged to use the Commission's deviation process, wherever appropriate, since this process also allows for broadened downward carrier pricing freedom, and in that respect provides a mechanism for addressing the concerns presented by the TD and CAB staff.

9. Given the ready availability of the deviation process, and the modifications to MRT 4-B made in D.82-07-083, the groundwork has been established for attaining the basic goals of the staff's reregulation proposals, and it is unnecessary to adopt any of these proposals at this time.

10. It would not be in the public interest to cancel MRT 4-B at this time.

11. The information submitted in this proceeding by CMSA has identified a need for updating the cost data underlying the MRT 4-B rate provisions, and we will direct the TD staff to work with the industry in a cooperative effort to gather the data necessary to update these rate provisions.

12. The record in this proceeding has also identified the need to develop alternative methodologies for setting minimum rates, and we will direct the TD staff to work with the interested parties to review present and alternative methodologies and present us with sufficient updated information to enable us to address this issue. ✓

Conclusions of Law

1. MRT 4-B should be retained for the present and no reregulation plan should be adopted at this time. ✓

2. The Commission's TD staff should begin working with CMSA (and other participants in this proceeding who desire to be so involved) to gather the data necessary to update the MRT 4-B rates.

3. The Commission's TD staff, working with the interested parties, should review present and alternative methodologies for calculating minimum rates, and present us with sufficient updated information to enable us to address the methodological issue. ✓

4. Modifications to MRT 4-B consumer protection provisions will be entertained in the proceedings to be scheduled prior to July 20, 1983, which will consider permanent guaranteed price provisions.

5. The investigation in OSH 100 in C.5330 and OSH 958 in C.5432 should be reexamined at the end of a year in light of the results of the staff work in Conclusions 2 and 3 and in light of any modifications made to the consumer protection provisions of MRT 4-B. |

INTERIM ORDER

IT IS ORDERED that:

1. MRT 4-B is retained for the present.
2. The investigation in C.5330, OSH 100 and C.5432, OSH 958 will be reexamined in one year in light of the results of the staff work set forth in Conclusions 2 and 3 and in light of any changes made to the consumer protection provisions of MRT 4-B.
3. The investigations in C.5330, OSH 100 and C.5432, OSH 958 remain open.

This becomes effective 30 days from today.

Dated May 4, 1983, at San Francisco, California.

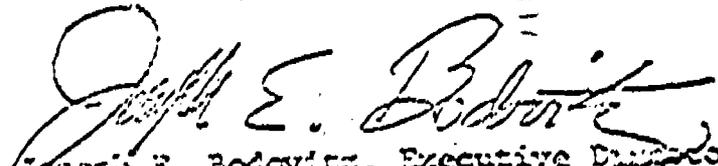
LEONARD M. GRIMES, JR.
President

VICTOR CALVO
DONALD VIAL
Commissioners

I dissent.

/s/ PRISCILLA C. GREW
Commissioner

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


Joseph B. Bođovitz, Executive Director

APPENDIX A

LIST OF APPEARANCES

Respondents: Jack E. Macy, for Macy Movers, Inc.; Armour C. Smith, for May Transfer & Storage Co.; Larry F. Meredith, for Dennis Transfer, Inc.; William A. Colwell, for United California Express & Storage Co., Inc.; Robert C. Coelho, for Cor-O-Van Moving & Storage Co.; Robert J. Menne, for Crown Moving & Storage; Robert E. Johnson, for Bekins Moving & Storage Co.; and James T. Carlson, for Carlson Van Lines.

Interested Parties: Edward J. Hegarty, Attorney at Law, and Thomas J. Hays, for California Moving and Storage Association; C. D. Gilbert and H. Hughes, for California Trucking Association; Alan Edelstein, Attorney at Law, for California Teamsters Public Affairs Council; E. Russell Chapman, Frank Spellman, and Philip K. Davies, for themselves; Jess J. Butcher, for California Manufacturers Association; Tad Muraoka, for IBM; David R. Wallace, for the State of California (Traffic Management); Gordon G. Gale, for The Clorox Company; Graham & James by David J. Marchant, Attorney at Law, and Julie Linden.

Commission Staff: William J. Jennings, Attorney at Law, John Lemke, Michael A. Doyle, and Jerald J. Kerschman.

(END OF APPENDIX A)



ORIGINAL

Decision 83 95 033 MAY 4 1983

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation)
for the purpose of considering and)
determining minimum rates for)
transportation of used household)
goods and related property statewide)
as provided in Minimum Rate Tariff)
4-B and the revisions or reissues)
thereof.)

Case 5330, OSH 100
(Filed April 12, 1977)

And Related Matter.)

Case 5432, OSH 958
(Filed April 12, 1977)

(For appearances see Appendix A.)

O P I N I O N

The captioned proceedings were initiated in order to receive evidence regarding whether the Commission should establish a regulatory program whereby carriers would establish rates and initiate changes in rates with respect to the movement of uncrated used household goods, personal effects and office, store and institutional furniture, fixtures, and equipment (household goods). Minimum rates for such transportation are contained in Minimum Rate Tariff 4-B (MRT 4-B).

Public hearings in Order Setting Hearing (OSH) 100, Case (C.) 5330 et al. were held in Sacramento, Fresno, San Diego, San Francisco, and Los Angeles during the period April 4, 1981 through October 29, 1981, and the proceedings were submitted upon receipt of briefs, which have been filed.

Both the Commission's Transportation Division staff (TD staff) and the Commission's Consumer Affairs Branch staff (CAB staff)

developed reregulation proposals regarding MRT 4-B transportation. California Moving and Storage ^{Association} Corporation (CMSA) also submitted a rate proposal in the proceedings. 55

The TD Staff Proposals

The TD staff advanced both a primary and an alternate reregulation proposal for MRT 4-B transportation. Under the primary TD staff proposal, MRT 4-B would be canceled. In its place, a new "standard rate" tariff (SRT) would be published by the Commission. This SRT would contain rules and rate structures quite similar to those now contained in MRT 4-B. SRT rates would be initially set at the MRT 4-B level existing at the time it was canceled. However, under the provisions of the SRT, household goods carriers would be free to quote and assess levels of rates varying anywhere from 15% below to 15% above the rates published therein.

Like the rates in MRT 4-B, the rates published in the proposed SRT could be adjusted periodically to reflect changes in cost of service. Such changes would be accomplished for SRT rates through the use of the Consumer Price Index.¹ Changes in this index would serve as proof of changes in cost of service and, therefore, as proof of the need for changes in SRT rates.

Under the alternate proposal advanced by the TD staff, MRT 4-B would also be canceled. No Commission rates for household goods would be published to fill the void left by its elimination. Those rules now contained in MRT 4-B that serve to protect consumers in their dealings with household goods carriers would be retained. They would be published in a new general order issued by the Commission.

The TD staff indicated that it wished the Commission to consider this alternate proposal only if the TD staff primary proposal were found to be an unacceptable substitute to the present minimum rate program.

¹ Published by the U.S. Department of Labor, Bureau of Labor Statistics.

updating this data as well as developing alternate methodologies for setting minimum rates. We therefore direct the staff to review the present and alternative methodologies for calculating minimum rates, and present us with sufficient updated information to enable us to address the need for developing a new methodology, if warranted. In the meantime we direct the staff to work with

12. The record in this proceeding has also identified the need to develop alternative methodologies for setting minimum rates, and we will direct the TD staff to review present and alternative methodologies and present us with sufficient updated information to enable us to address this issue.

Conclusions of Law

1. MRT 4-B should be retained, and no reregulation plan should be adopted at this time.

2. The Commission's TD staff should begin working with CMSA (and other participants in this proceeding who desire to be so involved) to gather the data necessary to update the MRT 4-B rates.

3. The Commission's TD staff should review present and alternative methodologies for calculating minimum rates, and present us with sufficient updated information to enable us to address the methodological issue.

4. Modifications to MRT 4-B consumer protection provisions will be entertained in the proceedings to be scheduled prior to July 20, 1983, which will consider permanent guaranteed price provisions.

5. The investigation in OSH 100 in C.5330 and OSH 958 in C.5432 should be discontinued and those matters should be closed.

O R D E R

IT IS ORDERED that the investigation in Order Setting Hearing (OSH) in Case (C.) 5330 and OSH 958 in C.5432 are discontinued and those matters are closed.

This becomes effective 30 days from today.

Dated MAY 4 1983, at San Francisco, California.

I dissent.
PRISCILLA C. GREEN, Commissioner

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