

ORIGINAL

Decision No. 89227 AUG 8 1978

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 state-
wide as provided in Minimum Rate
Tariff 4-B and the revisions or
reissues thereof.

Case No. 5330
Petition for Modification
No. 103
(Filed December 30, 1977;
amended May 17, 1978)

Loughran & Hegarty, by Edward J. Hegarty, Attorney
at Law, and Thomas J. Hays, for California
Moving and Storage Association, Inc., petitioner.
Charles W. Cunningham, for Cunningham Moving &
Storage; James A. Nevil, for Nevil Storage
Company; and Charles E. Pearson, for Nacal,
Inc.; respondents.
Charles D. Gilbert, for California Trucking
Association, interested party.
John Lemke, for the Commission staff.

O P I N I O N

California Moving and Storage Association, Inc. (CMSA), a nonprofit corporation whose membership is composed of approximately 600 carriers engaged in the transportation of household goods and related articles, seeks adjustment in the margin between written estimate charges and total collectible charges from 2½ percent or \$15, whichever is greater, to 10 percent or \$60, whichever is greater, on household goods moves over 50 miles as provided in Item 31.1 of Minimum Rate Tariff 4-B (MRT 4-B). Additionally, CMSA seeks to add a provision in MRT 4-B requiring shipment reweighs when actual weight exceeds by more than 10 percent the estimated weight. Copies of the petition were mailed to various chambers of commerce, shipper

organizations, and carrier representatives on or about December 30, 1977. The petition was listed on the Commission's Daily Calendar of January 4, 1978. No objection to the granting of the petition has been received.

Public hearing was held before Administrative Law Judge Pilling at San Francisco on June 1, 1978, and the matter was submitted. Evidence in support of the petition was presented by petitioner. The staff also presented evidence in support of the petition but recommends lesser amounts of change than those proposed by petitioner.

Evidence on Estimating

At the suggestion of the hearing officer and to reduce hearing time, petitioner agreed to adopt, as a portion of its direct testimony, its petition and first amendment thereto. Additional evidence showed that since the present rule was adopted in 1974, the number of estimates on distance moves has drastically declined. The table below sets forth the results of the present rule:

	<u>Total Shipments</u>	<u>Estimated Shipments Transported</u>	<u>Percent</u>
2nd and 3rd Qtrs of 1972*	29,185	13,201	45.2
1st Half 1975	24,000	4,801	20.0
2nd Half 1975	28,605	6,450	22.5
1st Half 1976	26,396	6,091	23.1
2nd Half 1976	30,857	7,261	23.5
1st Half 1977	27,933	6,597	23.6

*Prior to present rule.

Petitioner stated that the Legislature's intent in passing HR 57 in 1972 was to stop the practice of so-called "low-balling" whereby carriers would intentionally underestimate to obtain the business and then actually charge more than the estimate. At the

Legislature's request, the Commission performed studies and developed the present rule to control such practices. By requiring carriers to pay to the State the difference between the estimate, plus 2½ percent, and the charges applicable under MRT 4-B as a penalty, the Commission has effectively reduced the incidence of deliberate underestimating. Thus, the Commission has carried out the legislative mandate.

In the original development of the rule, however, petitioner stated that no evidence was offered in support of limiting the collectible amount to 2½ percent, and it is further asserted that the Commission's staff, in fact, recommended that 10 percent be used. In the instant proceeding, petitioner suggests that 10 percent is the appropriate allowance to provide carriers an opportunity to offer accurate estimates without the burden of penalty for minor miscalculation in estimating the weight and other incidents of the movement. Further, petitioner believes that the primary reason for the substantial reduction in the number of estimates issued is attributable to the extremely low level of tolerance for error under present circumstances.

Petitioner believes that industry, through competitive forces in the marketplace, will freely offer estimates to its customers if the 2½ percent is increased to 10 percent. It believes further that such level will be fair and equitable to both shippers and carriers. It argued also that consumers are accustomed to a 10 percent tolerance allowance because the Interstate Commerce Commission uses that figure as does this Commission in connection with local moves. A frequent complaint of sales persons and moving consultants is that explanation of the 2½ percent differential is difficult and is susceptible to misunderstanding. Through standardization of the

figure, petitioner believes consumers and carriers will each more readily understand their responsibilities and carriers will provide simpler, yet more accurate, information on the subject.

Petitioner admitted that there is broad difference of opinion concerning the appropriate tolerance level to be applied to estimates, but suggested that 10 percent would provide sufficient margin for carriers to offer the service to customers while retaining sufficient control to avoid hardships upon the public. It is recognized that the estimation of costs in household goods transportation cannot be exact and that precise statistics cannot be obtained. Absent the availability of such statistical calculations, petitioner suggested that adoption of the 10 percent tolerance for a test period of one year may be appropriate. As a result of the detailed estimating reports which household goods carriers are required to file with this Commission in accordance with Item 33.7 of MRT 4-B and, additionally, consumer questionnaires provided by carriers to shippers under Item 435 of MRT 4-B and Decision No. 87973, the Commission staff has the capability of monitoring changes in, and results of, estimating practices, and a one-year trial as suggested by petitioner would be in the public interest.

The Commission's staff witness explained field studies and interviews conducted with members of industry, and his analysis of statistical data relating to estimating. For study purposes the witness selected 50 carriers who reported annual revenue in excess of \$50,000 during 1976. Such selection was made in such a manner as to reflect current circumstances in the transportation of used household goods. Through telephone interviews of these carriers the witness developed the following summary:

Estimating Practices

	<u>Number of Carriers</u>	<u>Percent Distribution</u>
Give estimates freely	30	60.0
Give estimates selectively	11	22.0
Do not give estimates	<u>9</u>	<u>18.0</u>
Total	50	100.0

Opinion of Current Estimating Rules

	<u>Number of Carriers</u>	<u>Percent Distribution</u>
Workable	3	6.0
Not workable	46	92.0
No opinion	<u>1</u>	<u>2.0</u>
Total	50	100.0

Thus, 92 percent of the carriers selected stated that the current rule is not working even though 60 percent said they freely give estimates. This apparent conflict was reconciled by the witness when he explained that 23 out of the 41 carriers who give estimates, generally estimated high to avoid penalties. The witness concluded that this practice misleads the customer by overestimating charges for service requested, causing a loss of business to the industry that it may have otherwise retained.

The staff witness also prepared a summary of replies from carriers as to what would be a reasonable substitute for the present $2\frac{1}{2}$ percent tolerance:

Suggested Percentage Factors

	<u>Number of Carriers</u>	<u>Percent Distribution</u>
No opinion	1	2.0
2½ percent	0	0.0
5 percent	3	6.0
10 percent <i>110</i>	42	84.0
Greater than 100 percent	3	6.0
No tolerance	<u>1</u>	<u>2.0</u>
Total	50	100.0

This witness stated that the high response to 10 percent (84 percent) was attributable to carriers' exposure to the Interstate Commerce Commission rule wherein the customer must pay no more than 10 percent above the estimate upon delivery, with credit extended for 15 days on the balance, if any.

In preparing his exhibit the witness said he reviewed the petitioner's proposal in light of advantages and disadvantages it may contain. He concluded that the 10 percent tolerance proposed would create more estimates for the public and that this 10 percent tolerance would produce more estimates than would be produced at the 5 percent tolerance recommended by the staff. Secondly, he concluded that where the public was dealing with conscientious carriers, such carriers would attempt to render accurate estimates, and the practice of deliberate overestimating to avoid penalty would be reduced.

As a disadvantage to the adoption of petitioner's proposal, the witness testified that distance moves are somewhat easier to estimate than local moves which are estimated currently with a 10 percent tolerance. He concluded from this finding that the tolerance on distance moves should be less than that of local moves, although he conceded that the local estimating tolerance may be too low. The

other disadvantage to petitioner's request, as enunciated by the witness, related to the number of carriers who now give estimates. His summaries indicate that 30 of the 50 carriers interviewed freely make estimates.

By Decision No. 87973, effective March 18, 1978, the Commission revised its regulations relating to information MRT 4-B carriers must give to their shippers. Included with the "Important Notice to Shippers of Household Goods Within California" booklet is a questionnaire to be completed by the shipper and returned to the Commission. The completed questionnaire defines the quality of service provided and determines the degree of shipper satisfaction with that service.

Between March 18 and April 26, the Commission received 239 such questionnaires from household goods shippers. Of the 239 shipments, 67 related to distance moves and 42 of those received estimates while 22 did not (the remaining 3 made no comment relative to estimates). Of the 42 who received estimates, 38 were satisfied with the overall service received.

From the data received from carriers, shipper replies to questionnaires, and statistical information regularly accumulated, the witness concluded that the companion dollar amount of \$15 should be retained but a 5 percent tolerance in lieu of the present 2½ percent would be reasonable.

Evidence on Weighing Practices

Petitioner proposes that a provision be added to Item 120 of MRT 4-B to require household goods carriers to reweigh shipments where the actual weight exceeds by more than 10 percent the estimated weight. Petitioner said that while there are no known incidents of weight manipulation on California shipments, it is in the public interest that MRT 4-B contain rules to control any such practice in the future.

The staff agreed that such a rule would be beneficial, but again recommended that a 5 percent tolerance be used in lieu of 10 percent.

Petitioner also recommends that Addendum Order for Service in Item 33.5 be amended. Under the item's present language an addendum may only be used at time of pickup or thereafter. Under these circumstances where the customer requests additional services, such as packing, after the estimate is provided, but prior to pickup, the carrier's options are to provide such services at no additional cost to the customer, or to decline to provide such services. Petitioner requests that the words "at time of pickup or thereafter" in the item be deleted.

Discussion

MRT 4-B governs the transportation of a most sensitive nature in that most shippers are family "households" with very little or no experience dealing with complex transportation rules and regulations. We feel that it is of utmost importance that these shippers should be able to know in advance the amount of charges they will be required to pay. This underlying principle requires that estimates be given freely and that these estimates be reasonably accurate. The record in this case reveals that many carriers are not freely providing estimates.

It should be noted that the Interstate Commerce Commission has recently proposed rules which would make the providing of estimates mandatory and would also allow no tolerance for error on the estimates. At this time, we feel that we can adopt rules which encourage carriers to provide voluntary estimates freely and yet retain rules which protect the consumer from inaccurate estimates. In the event these measures are not adequate, we will re-examine our estimating requirements, particularly the provision for voluntary estimates.

MRT 4-B contains two provisions which affect estimating practices. Item 31.1 provides that a consumer can be charged no more than 2½ percent over the estimate, plus any charges on the addendum service order. Item 33.7 provides that a carrier must pay as a penalty to the Commission the difference between the minimum rate and 2½ percent

over the estimate, plus any charges on the addendum. In order to insure reasonably accurate estimates, we will not change the first provision. However, in order to ease the burden on carriers for miscalculations and to, therefore, encourage carriers to more freely provide estimates, we will increase the tolerance on estimates for calculating the payment of penalties to the Commission for violation of MRT 4-B. We feel that CMSA's proposal of a 10 percent tolerance is reasonable in this regard. The result should be that on a shipment on which a penalty is required, the net revenue going to the carrier will be between the CMSA's and the staff's proposal, and will be substantially more than under the current rules.

Had the petitioning carrier association requested, as a quid pro quo in exchange for greater estimating latitude, provisions requiring the issuance of estimates, we would be more inclined to view favorably a proposal to liberalize the existing $2\frac{1}{2}$ percent latitude. The carrier industry should understand that this is one area of transportation in which we have possibly the greatest duty to the shipper. Shippers of used household goods are not sophisticated; the expense for moving and relocating a household can be considerable, and a high margin of error in estimating the ultimate charges can potentially have a severe impact on household resources. These shippers are not business or corporate shippers who necessarily have a cash flow or cushion to absorb higher charges than anticipated, or who have a product to resell in which higher charges can be passed on and recovered.

In addition to knowing the amount of charges beforehand, we believe that important facts relating to a carrier's past performance should be made available to potential customers. Such factors as what percentage of estimated moves are accurately estimated, the percentage of moves resulting in loss and damage claims, how soon such claims are settled, and the percentage of moves which were picked up and delivered on time are all important facts that should be available to a shipper in the process of choosing a carrier.

Decision No. 87973, Case No. 5330, Petition 99, did provide for a shipper's rating postcard to be included with the "Important Notice to Shippers of Used Household Goods",^{1/} which carriers are required to furnish all shippers. However, no provision was made for compiling the responses and indexing, for example, the complaints per hundred moves, according to category of complaint, and making the results public. Such a rating system could encourage carriers to provide superior service. Those carriers who ranked high on the service index could advertise and solicit business based on a good service record. The transportation of used household goods, unlike much general freight transportation, is especially comprised of service components, and the shipper is not the sophisticated traffic manager who continually deals with and evaluates carrier service in professional transportation circles. We expect that a well-devised service index, based on shipper-submitted service reports, will, if the carrier industry thinks about it, be viewed as a positive step to allow reputable carriers public recognition for good service. Also, it could enhance the general public's perception of the household goods carriage industry and the benefits of dealing with a regulated carrier. We therefore direct the Commission's Consumer Affairs Branch to formulate proposals for a "report card" system to accomplish this goal. Also, we invite similar proposals or suggestions from the Transportation Division, the State Department of Consumer Affairs, the moving industry, and any other interested party.

Regarding the petitioner's proposal concerning weighing practices, we note that the provision for reweighing would only apply on shipments on which an estimate had been given. We think that our retention of a 2½ percent tolerance on estimating is sufficient protection for consumers at this time. However, the petitioner's assumed purpose to prevent "weight bumping" abuses is laudable.

^{1/} We have received correspondence from the public, regarding this notice, indicating that the language is too technical and that the public not versed in transportation terminology has difficulty understanding it. The notice should, in our opinion, be studied and re-evaluated by our staff in an effort to make sure the average household goods shipper can understand it.

We suggest that the industry seek ways to prevent these potential abuses on all shipments, not just on those which have been estimated. One potential solution would be to incorporate the petitioner's proposal along with a rule making it mandatory that the carrier give all confirmed shippers an estimated weight of their shipment. We offer this suggestion for future consideration.

We also make the observation that many estimating and "weight bumping" potential problems result from assessing used household shipment charges based on weight. Although weight is the traditional unit of measurement applied by for-hire carriers, it may be that charges based on cubic volume would better serve the shipping public and result in fewer problems for household goods carriers. For example, shippers could closely estimate cubic volume themselves, whereas they are dependent on carrier estimators to estimate weight. We invite our staff and the petitioners to explore this alternative.

Findings

1. The existing estimating rules contained in MRT 4-B were established by Decisions Nos. 82157 and 83639 effective November 24, 1974.

2. Since 1974 circumstances have changed to such an extent that the number of estimates issued on movements of used household goods in excess of 50 miles has been substantially reduced, due in large part to the low percentage tolerance which is allowable between estimated and collectible charges.

3. Estimating of the cost of transporting used household goods is not susceptible to precise measurement and, therefore, the optimum level of tolerance between estimated and collectible charges is not readily apparent.

4. The Commission should endeavor to determine, in the marketplace, the proper percentage of tolerance in order to encourage industry to provide accurate estimation of moving costs in connection with shipments requiring movement in excess of 50 miles in California. This can be accomplished by directing an expiration date of December 31, 1979 for the following order.

5. Because we are dealing with the extremely sensitive matter of "low-balling", caution dictates that we deal in small increments or marginal increases rather than in bold increases as proposed by petitioner. *U. S. DEPARTMENT OF THE ARMY, WASHINGTON, D. C.*

6.1 The change in the wording of Item 33.5 is in the public interest and should be adopted.

7. To the extent that the provisions of MRT 4-B heretofore have been found to constitute reasonable rules for common carriers as defined in the Public Utilities Code, said provisions, as hereinafter adjusted, are, and will be, reasonable minimum rate provisions for said common carriers. To the extent that the existing rates and charges of said common carriers for the transportation involved are less in volume or effect than the minimum rates and charges designated herein as reasonable for said carriers, to that same extent the rates and charges of said carriers are, and for the future will be unreasonable, insufficient, and not justified by the actual competitive rates of competing carriers or by the cost of other means of transportation.

Conclusions

1. Petition No. 103 in Case No. 5330 should be granted to the extent provided by the order herein.
2. MRT 4-B should be amended as provided in the order which follows.
3. Since a major volume of household goods transportation within California occurs during the summer months, the order herein, which should encourage the providing of estimates, should be made effective the date hereof.

O R D E R

IT IS ORDERED that:

1. Minimum Rate Tariff 4-B (Appendix C to Decision No. 65521, as amended) is further amended by incorporating therein, to become effective twenty-five days after the date hereof, the revised tariff pages attached hereto and listed in Appendix A, which pages and appendix by this reference are made a part hereof.

2. Common carriers subject to the Public Utilities Act, to the extent that they are subject also to Decision No. 65521, as amended, are directed to establish in their tariffs the increases necessary to conform with the further adjustments ordered by this decision.

3. Tariff publications required to be made by common carriers as a result of this order shall be filed not earlier than the effective date of this order and made effective on not less than two days' notice to the Commission and to the public.

4. The Commission's Consumer Affairs Branch is directed to study the desirability of, and present proposals on, a shipper report card as the basis of establishing a service index for public release. This study shall be completed within one hundred twenty days, at which time the Commission will issue an Order Setting Hearing in Case No. 5330 to consider the matter. ✓

5. The Executive Director is directed to serve a copy of this order by mail on all highway carriers subscribing to MRT 4-B. ✓

6. In all other respects, Decision No. 65521, as amended, shall remain in full force and effect.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 8th day of AUGUST, 1978.

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Claire T. Dodrick, being necessarily absent, did not participate in the disposition of this proceeding.

Robert Bateman
President

Terrence L. Sturgeon
Richard D. Charles

Commissioners

APPENDIX A

LIST OF REVISED PAGES TO MINIMUM RATE TARIFF 4-B.

EIGHTH	REVISED	PAGE	7-BBB
FIRST	REVISED	PAGE	7-BBBB

(END OF APPENDIX A)

MINIMUM RATE TARIFF 4-B

MINIMUM RATE TARIFF 4-B		SECTION 1--RULES (Continued)	ITEM
		<p>ADDENDUM ORDER FOR SERVICES (See Exception in Item 31)</p> <p>41. If the shipper asks for additional services or adds additional articles to the shipment that were not covered in the Basis for Carrier's Probable Cost of Services document, the carrier shall prepare in duplicate an Addendum Order for Service document (Item 453). Such document shall be signed by the carrier and shipper prior to the commencement of performance of any service specified therein, and the signed original delivered to the shipper prior to or at the time such service is begun. The document shall contain the following information:</p> <p>(a) Date. (b) Name and address of carrier or carriers. (c) Description of shipment (Additional only). (d) Description of transportation and accessorial services to be performed (including number of helpers and number of packers to be provided). (e) Rates and charges. (f) Valuation of shipment (Subject to conditions set forth in NOTE 4 - Item 150). (g) The following statements shall be placed upon the document: (In letters not less than 10 point bold, universe or Gothic.)</p> <p>(1) THIS WILL CERTIFY AND ATTEST THAT SHIPPER OR SHIPPER'S REPRESENTATIVE AS SHOWN ON ORDER FOR SERVICE NO. _____ DATED _____ WITH (CARRIER'S NAME) _____ REQUESTS THE FOLLOWING ADDITIONAL SERVICES AND CHARGES.</p> <p>(2) I UNDERSTAND THAT I MAY BE REQUIRED TO PAY FOR THE SERVICES REQUESTED ABOVE AT TIME OF DELIVERY. THESE CHARGES ARE IN ADDITION TO THOSE CHARGES SET FORTH ON PREVIOUS PROBABLE COST OF SERVICES DOCUMENT. CARRIER IS NOT REQUIRED TO EXTEND CREDIT IN THE AMOUNT OF THE CHARGES ACCRUED FOR THE ABOVE ADDITIONAL SERVICES.</p> <p>I HAVE READ THIS CONTRACT AND AGREE WITH THE PROVISIONS THEREOF, AND RECEIVED A COPY.</p> <p>(h) Signature of carrier and shipper or his representative.</p> <p>2. The form of the Addendum Order for Service document in Item 453 will be suitable and proper.</p> <p>3. The duplicate of each document issued in compliance with the provisions of this item shall be retained and preserved by the issuing carrier, subject to the Commission's inspection, for a period of not less than three years from the date thereof.</p>	<p>833.5</p>
<p>ø Change) Δ Change, neither) Decision No. 89227 increase nor reduction)</p>			
EFFECTIVE			
ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.			
Correction			

MINIMUM RATE TARIFF 4-B

SECTION 1--RULES (Continued)	ITEM
<p style="text-align: center;">PENALTIES AND REPORTING OF UNDERESTIMATES (See Exception in Item 31)</p> <ol style="list-style-type: none"> 1. An underestimate occurs when the charge assessed by the carrier exceeds the original estimate by more than (a) 24 percent or \$15.00, whichever is greater, on distance moves involving rates in Items 300 and 320, plus the charge on the Addendum Order for Service, or (b) 10 percent or \$15.00, whichever is greater, on hourly moves, plus the charge on the Addendum Order for Service. 2. The penalty for underestimating is the difference between the charge under the applicable minimum rates, on the one hand, and the charge based on the estimate plus 6(E)10 percent or 6(E)60.00, whichever is greater, on distance moves involving rates in Items 300 and 320 plus the charge on the Addendum Order for Service, or 10 percent or \$15.00, whichever is greater, on hourly moves involving rates in Item 330, plus the charge on the Addendum Order for Service, on the other hand. 3. Penalties for underestimates shall be paid to the Commission for deposit in the General Fund of the State of California. Each underestimate subject to a penalty shall be reported within thirty days after completion of the transportation service. The report shall be accompanied by a check or money order made payable to the Commission for the amount of the penalty imposed, whether or not the carrier has received full payment for its services. 4. The Commission shall furnish to each carrier subject to this tariff a sample form for the information of the carrier to be used for reporting underestimates, and penalties. It is the carrier's responsibility to reproduce necessary copies of the form for its own use. 5. Every carrier subject to the tariff shall file with the Commission a semi-annual report of its: <ol style="list-style-type: none"> (a) Total number of shipments on which written estimates were given. (b) Number of shipments on which penalties were paid because of an underestimate. (c) Total amount of penalties paid on such underestimates. (d) Such other information as may be required by the Commission. <p>The Commission shall furnish the report form, which shall be completed by the carrier within 30 days after the close of the reporting period to which it relates.</p> 6. Every Household Goods Carrier and officer, director, agent or employee of any Household Goods Carrier who deliberately underestimates charges applicable to the carriage of goods under Minimum Rate Tariff 4-B, in order to encourage a shipper to engage its transportation services is subject to the penalties and restrictions provided in Articles 7 and 8 of the Household Goods Carriers Act. For the purposes of this rule, a deliberate underestimate shall mean the tendering of a willful and intentional quotation of probable cost of services less than that required by application of unit costs prescribed in Minimum Rate Tariff 4-B, with knowledge that the actual charges required by the tariff will be more than the amount of the quotation or estimate. 	<p>633.7</p>
<p>(E) Expires December 31, 1979.</p> <p>6 Change) 6 Reduction) Decision No. 89227</p>	
EFFECTIVE	
ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.	

Correction