

ORIGINAL

Decision No. 92276 OCT 8 1980

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.)

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(Filed November 30, 1979)

Handler, Baker, Greene & Taylor, by
Daniel W. Baker, Attorney at Law,
for Peeters Transportation Co., Inc.,
respondent.
Thomas J. Hays, for California Moving and
Storage Association, interested party.
Elmer Sjostrom, Attorney at Law, and
E. Hjelt, for the Commission staff.

O P I N I O N

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

(1) Whether respondent has violated Sections 5139, 5193, 5196, and 5245 of the Public Utilities Code by failing to comply with the estimating and documentation rules set forth in Items 31, 31.1, 33.5, 33.7, 145, and 155 of Minimum Rate Tariff 4-B (all tariff references will be to Minimum Rate Tariff 4-B in effect when the subject shipments were made).

(2) Whether respondent has charged and collected more than the maximum charges applicable.

(3) Whether respondent should be ordered to pay to shippers the difference between the charges collected and the maximum charges applicable under the aforementioned tariff provisions.

(4) Whether respondent should be ordered to pay to the Commission for deposit in the General Fund of the State of California any underestimating penalties applicable under the provisions of Item 33.7 of MRT 4-B.

(5) Whether respondent should be ordered to cease and desist from any and all unlawful operations and practices.

(6) Whether the operating authority of respondent as a household goods carrier should be cancelled, revoked or suspended, or as an alternative, whether a fine should be imposed pursuant to Section 5285 of the Public Utilities Code.

(7) 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 on the matter on June 17 and 30, 1980 at San Francisco before Administrative Law Judge Pilling.

The scope of the investigation was limited to 11 shipments of used household goods transported by respondent between January and October 1977. The Commission staff contends that respondent overcharged each of 10 shippers by assessing and collecting charges in excess of those appearing on the Probable Cost of Service form (PCS) given by respondent to the shippers and that one shipper was overcharged as the result of respondent's failure to timely obtain the shipper's signature on the Confirmation of Shipping Instructions form (confirmation), which is a multipurpose document acting as an order for service, rate quotation, delivery receipt, and freight bill.

The for-hire movement of used household goods is governed by MRT 4-B. Item 31 of the tariff provides that a carrier may give a prospective shipper an estimate of the probable cost of service and that if an estimate is given it must be given in writing on the PCS.

Items 32 and 33, respectively, require that when a PCS is delivered to a shipper the shipper must also be given a two-sided document showing the basis of the carrier's estimate signed by the shipper and on the reverse side of the document showing a table of measurements. When a move involves a PCS and the carrier collects a charge in excess of the PCS charge plus a prescribed tolerance, the carrier is deemed to have overcharged the shipper in the amount of the excess (Items 31.1 and 155) and must refund the excess to the shipper, and if the PCS was for less than the minimum rates, the carrier must pay a penalty to the Commission (Item 33.7).

Item 145 of the tariff requires a carrier, before undertaking a used household goods move, to prepare a confirmation, have the shipper sign it, and give a shipper-signed copy to the shipper. Where the move, including any prepackaging, is undertaken by the carrier without issuing a PCS or a confirmation, the carrier is required by Item 155 of the tariff to charge the shipper minimum rates applicable to the service rendered. Where the move involves a PCS and the shipper asks for additional services or adds additional articles at time of pickup or thereafter, Item 33.5 requires the carrier to issue an amendment to the confirmation (addendum) and have the shipper sign it prior to the commencement of the additional service. If the addendum is timely issued and signed by the shipper the charges shown in the addendum will be included in the total charges due. If the addendum is not timely issued and signed by the shipper the carrier will not be relieved of its obligation of charging no more than the amount appearing on the PCS.

At all times respondent held a permit to operate as a household goods carrier, a radial highway common carrier, and a highway contract carrier and subscribed to the tariff. Respondent operated three tractors, three van trailers, one flatbed trailer and two van trucks. It employed seven office sales persons and nine drivers, helpers, packers, and warehousemen. During 1977 respondent had a gross operating revenue from intrastate operations of \$555,559.

Noting that respondent had not made a report to the Commission as then required on the number of PCS's it had issued for the first half of 1977 and that an overcharge claim based on a PCS had been made to the Commission against respondent, an investigator for the Commission staff examined respondent's record of hauls for the year 1977. The examination was made during the better part of January and February 1978 and involved the records of 1,000 hauls made by respondent. Exhibit 2, which has eleven numbered parts, contains copies of records from respondent's files described below which the staff contends reveal instances where respondent overcharged 11 shippers.

Part 1 of Exhibit 2 (The Weiss move) contains a PCS of \$304.65 and a confirmation showing total charges to be assessed for that move of \$393.94. The staff investigator testified that respondent's cash book shows that the total amount collected for the Weiss move was \$393.94.

Part 2 of Exhibit 2 (the Tolstoy move) contains a PCS and addendum totaling \$3,800 and a confirmation showing total charges to be assessed for that move of \$4,659.39. The staff investigator testified that respondent's cash book reflects a collection of \$4,659.39.

Part 3 of Exhibit 2 (the James move) contains a PCS of \$1,277.10 and a confirmation showing total charges to be assessed of \$1,359.49. The staff investigator testified that respondent's cash book shows that \$1,359.49 was collected for the move.

Part 4 of Exhibit 2 (the O'Day move) contains a PCS of \$300.40 indicating the shipper to be Columbo, a confirmation naming O'Day as shipper but signed by Patricia Columbo, and a freight bill to the debtor Electro Vector for \$590.85. The staff investigator testified that respondent's cash book showed that respondent had collected \$330 from Electro Vector for the move.

Part 5 of Exhibit 2 (the Mahaffey move) contains a PCS of \$1,150.85 and a confirmation showing total charges to be assessed of \$1,347.60. The staff investigator testified that respondent's cash book shows the amount collected for the move was \$1,636.18.

Part 6 of Exhibit 2 (the Farner move) contains a confirmation showing total charges to be assessed of \$2,432.78. The confirmation shows the shipper signed the confirmation on May 30, 1977 for a move which was packed by respondent on 5/26/77. The staff investigator testified that respondent's cash book shows the amount collected for the Farner move was \$2,432.78.

Part 7 of Exhibit 2 (the Mahoney move) contains a confirmation issued by another household goods carrier showing total charges to be assessed of \$1,003.25 with a note in the lower right hand corner reading "Quote from Peeters to M. Mahoney and to Stanford Credit Union, \$870.59". The staff investigator testified respondent's cash book reflects that \$1,003.25 was collected for this move.

Part 8 of Exhibit 2 (the Sweet move) contains a PCS of \$644.75, which involved transportation charges from residence to storage, storage, and transportation charges from storage to residence. Part 8 also contains two confirmations, one which shows total charges to be assessed of \$487.62 for a house-to-house move and the other, unsigned by the shipper, which shows total charges to be assessed of \$425.70 for a move from storage to residence. The staff investigator testified that respondent's cash book showed that \$901.53 had been collected from the composite move.

Part 9 of Exhibit 2 (the Cook move) contains a PCS of \$752.95 and a confirmation showing total charges to be assessed as \$812.22. The staff investigator testified that respondent's cash book reflects that \$812.22 had been collected for the move.

Part 10 of Exhibit 2 (the Hall move) contains a PCS of \$644.55 and a confirmation showing total charges to be assessed of \$1,035.93. The shipper had made a handwritten note on the confirmation at the time he signed the delivery receipt portion of the confirmation which read "Very courteous--very efficient--I am well satisfied". Also contained is an addendum showing that three appliances had been added to the move. The same handwritten note appearing on the confirmation was reproduced on an addendum. The staff investigator testified that he found the addendum form attached to the confirmation in such a way that when the shipper made the note on the confirmation form at the time he signed the delivery receipt portion of the confirmation the note and signature were reproduced through to the addendum making it appear that the shipper had signed the addendum. The staff investigator testified that respondent's cash book reflected that \$1,035.93 had been collected for the Hall move.

Part 11 of Exhibit 2 (the Thornton move) contained a PCS of \$595.85, a confirmation showing total assessed charges of \$655.48, and an addendum with no information entered and unsigned by the shipper. The staff investigator testified that respondent's cash book reflects that \$655.48 had been collected for the Thornton move.

Exhibit 2 included copies of a table of measurement for each of the involved moves except for the O'Day, Farner, and Mahoney moves. The tables of measurements included were filled out in great detail and had preprinted at the top of each the words "For Estimated Charges See Other Side". Exhibit 2 contained no copies of a basis for probable cost.

Exhibit 4 is a recapitulation of the charges assessed each of the 11 shippers by the respondent; the correct charges as determined by staff; the penalties, if any, which the staff alleges respondent should be charged; and the amount of refunds which the staff contends the Commission should order respondent to pay. Exhibit 4 shows refunds due debtors in the amount of \$2,159.25 and penalties in the amount of \$1,248.76. 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 PCS plus the allowable tolerance^{1/} plus the charge on the addendum.

The staff recommends that respondent be required to pay a punitive fine of \$3,000 with the provision that \$2,000 of such fine be suspended if respondent does not appear before the Commission in a formal proceeding charged with violation of the Household Goods Carriers Act for a period of three years from the date of this decision.

^{1/} For shipments moving under distance rates the tolerance is 2½ percent or \$15.00, whichever is greater. On hourly-rated shipments it is 10 percent or \$15.00, whichever is greater.

The investigator for the staff testified that he had no knowledge that any of the involved PCS's had actually been given to the respective shippers except to the shippers involved in the O'Day and Sweet moves.

The shipper involved in the Sweet move, a Methodist minister, introduced into evidence (Exhibit 6) a PCS and table of measurements which he testified had been given to him by a representative of respondent after the representative had visited the shipper's residence and looked over the articles to be moved. The shipper stated he chose to use respondent's service because respondent's estimate was the lowest estimate submitted by several carriers bidding for his business. The investigator for the Commission staff testified that he had been assigned to investigate an informal overcharge complaint filed with the Commission by the shipper in the O'Day move who furnished a copy of the PCS made out to Columbo with his informal complaint. At the hearing respondent agreed that respondent issued a PCS in the Tolstoy move (Transcript, page 9).

The president of respondent testified that, with few exceptions, his company has a policy, established by himself, of not issuing PCS's on intrastate moves of used household goods. He stated that it takes a salesman up to five or six hours to make and complete a competent estimate which costs the company approximately \$75 to \$100. At least two hours of the salesman's time is spent in the house looking over the articles to be shipped and another three hours driving to and from the job, typing and refining the three forms involved, and presenting all the documents to the shipper. He doubted his salesmen would expose themselves to the

liability of making a wrong estimate because of the close tolerances allowed and they cannot afford the time that is involved. Furthermore, many shippers resent having a stranger on the premises for the two hours. He stated that his salesmen use the PCS form and table of measurements form as handy forms for noting information required to be known in advance by his company for setting up a move. He could find nothing in his files to indicate that any of the 11 involved shippers had been issued a PCS. He interprets the tariff to require an addendum to the confirmation to be issued where there has been a previous PCS issued and in the event the shipper changes his mind at time of pickup or thereafter, but if the shipper changes his mind before pickup then no addendum need be issued. He testified that at times his company, when requested, will give a "budgetary figure" to companies or government agencies and that the Transportation Division of the General Services Department, State of California, has stated in writing to California carriers that they will not hold the carriers liable if carriers give them a budgetary figure before making a move for them. He stated that he has given selected salesmen the power to issue a PCS. Respondent contends that where prepacking is involved the confirmation need not be presented to the shipper until the shipment is actually picked up.

Respondent's salesman who signed the PCS involved in the Sweet move testified he was given the prerogative in certain instances of issuing a PCS form, primarily in connection with United Methodist Church moves and that he issued the PCS form no more than six to ten times a year. In issuing the PCS he never issued the basis of probable cost form because the company did not have any such forms. He stated he did not think it practical for him to issue a binding cost quotation because it takes too much time to fill in the many forms required. He is a commission salesman and his income depends on the business he turns in rather than the number of forms he fills out.

Discussion

Respondent takes the position that in giving a PCS to a shipper the PCS is not binding on the carrier if the carrier does not at the same time give the shipper the two-sided document required by Items 32 and 33. We do not agree. Items 31 and 31.1 read in part as follows:

"1. . . . Every carrier of household goods may upon request of a shipper cause to be given to such shipper a probable cost for the proposed services..."

* * *

"3. . . . The maximum total charges assessed by the carrier shall not exceed by more than 2½ percent or \$15.00, whichever is greater, the amount of the probable cost of services on that shipment..."^{2/}

"4. . . . The maximum total charges assessed by the carrier shall not exceed by more than 10 percent or \$15.00, whichever is greater, the amount of the probable cost of services on that shipment..."^{3/}

The tariff portions quoted require only that the PCS be given the shipper in order to bind the carrier to the estimate. We hold that the giving of a PCS to a shipper is binding on the carrier even if the carrier does not give the shipper the two-sided document required by Items 32 and 33.

Concerning respondent's contention that an addendum never need be issued if the shipper changes his mind and decides to add additional articles or to request additional service after the PCS has been issued but before the move commences, we do not agree.

Item 33.5 reads in part as follows:

"1. If at time of pickup or thereafter, the shipper asks for additional services or adds additional articles to the shipment that were not covered

^{2/} Applies on charges involving distance rates provided in Items 300 and 320.

^{3/} Applies on charges involving hourly rates provided in Item 330.

in the Basis for Carrier's Probable Cost of Services document, the carrier shall prepare in duplicate an Addendum Order for Service Document."

The requirement to issue an addendum after a PCS has been issued is not conditioned on the shipper's change of mind after the PCS has been issued but is conditioned on whether or not the carrier, at the request of the shipper, picks up additional articles and/or performs or will perform additional services not included on the Basis for Carrier's Probable Cost of Services Document.

We also disagree with respondent's contention that when prepacking is involved the carrier need not present the confirmation to the shipper for signing before the shipment is actually picked up. Item 145 states unequivocally that the confirmation "shall be signed by the carrier and shipper prior to the commencement of performance of any service specified therein...". As prepacking must be listed on the confirmation it must be signed by the shipper prior to or at the time the prepacking is commenced.

Respondent also takes the position that the staff did not sustain the burden of proof in respect to the 10 shipments involving a PCS in that the staff failed to show that any PCS was actually issued, that is, given to the shippers, and that without evidence of the "giving" of a PCS the Commission cannot hold respondent to any PCS found in respondent's files. Section 5245 of the Public Utilities Code, which respondent is charged with violating, gives the Commission specific power to "establish rules and regulations controlling the estimates given by a household goods carrier to a shipper". Therefore, evidence which shows the shipper was given a PCS is crucial before we may order respondent to pay a monetary penalty and require respondent to refund to a shipper the excess over the amount found on the PCS's. In the Weiss, James, Mahaffey, Cook, and Thornton moves there is no evidence that a PCS was ever given to the involved shippers. Only in the Sweet, O'Day, and

Tolstoy moves was there evidence that a PCS had been given. Hence, we will hold respondent to the charges on PCS only in respect to the latter three moves.

In the Hall move, as well as the Farner move, respondent failed to timely obtain the signature of the shippers on the addendum. In the Hall move the addendum was signed the day the shipper receipted for delivery of the shipment. In the Farner move the confirmation was signed on May 30, 1977 for work starting on May 26, 1977. Hence, respondent overcharged these two shippers to the extent that the actual charges exceeded the applicable minimum rates.

In summary, respondent overcharged the shipper in the Tolstoy, O'Day, and Sweet moves to the extent that the actual charges collected from each shipper exceeded the amount on the respective PCS plus the allowable tolerance. Respondent overcharged the shippers in the Hall and Farner moves to the extent that the actual charges collected exceeded the applicable minimum rates. The shipper in the Thornton move was charged the applicable minimum rates so there was no overcharge. In the Weiss, James, Mahaffey, Cook, and Mahoney moves the shippers were charged the amount appearing on their respective confirmations so these shippers were not overcharged.

Following is a computation, based on the figures shown in Exhibit 4, showing the correct charges which should have been made with applicable refunds and penalties, if any, in the Tolstoy, O'Day, Farner, Sweet, and Hall moves:

1. The Tolstoy move.	
Charge paid	\$4,659.39
PCS, plus tolerance plus addendum	<u>3,974.56</u>
Refund to debtor	\$ 684.83
2. The O'Day move.	
Charge paid	\$ 330.00
PCS plus tolerance	<u>315.40</u>
Refund to debtor	\$ 14.60
Minimum rate charge	\$ 513.08
PCS plus tolerance	<u>315.40</u>
Penalty	\$ 197.68
3. The Farner move.	
Charge paid	\$2,432.78
Applicable minimum rate	<u>2,297.52</u>
Refund to debtor	\$ 135.26
4. The Sweet move.	
Charge paid	\$ 901.53
PCS plus tolerance	<u>709.23</u>
Refund to debtor	\$ 192.30
Minimum rate charge	\$ 886.36
PCS plus tolerance	<u>709.23</u>
Penalty	\$ 177.13
5. The Hall move.	
Charge paid	\$1,035.93
Applicable minimum rate	<u>991.80</u>
Refund to debtor	\$ 44.13

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 tariff governing such operations.

2. The Commission staff introduced into evidence copies of records obtained by the staff from respondent's files covering eleven shipments of used household goods transported by respondent in 1977.

3. In each of ten of the shipments, including the Sweet move and the O'Day move, respondent's records show that it assessed and collected charges in excess of the amount shown on a corresponding PCS found in respondent's files.

4. The shipper in the Sweet move testified that respondent had given him a copy of the PCS corresponding to his move when respondent was soliciting his move.

5. The shipper in the O'Day move had mailed a copy of the PCS corresponding to his move to the Commission attached to a letter of complaint about the charges assessed being greater than those represented in the PCS.

6. Respondent admitted issuing a PCS to the shipper in the Tolstoy move.

7. No probative evidence was submitted to show that any of the shippers, or their representatives or debtors involved in any of the moves, except in the Tolstoy, O'Day, and Sweet moves, had been given a PCS covering the moves.

8. Respondent overcharged the shipper or debtor, as the case may be, in the Tolstoy, O'Day, and Sweet moves to the extent that the actual charges collected from each exceeded the amount on the respective PCS, including any addendum, plus the allowable tolerance.

9. The confirmation in the Farner move was issued too late to be effective.

10. The addendum in the Hall move was issued too late to be effective.

11. Respondent overcharged the shippers in the Farner and Hall moves in the amount of the difference between the amount of charges each paid and the applicable minimum rates.

12. The staff's figures and computations and the circumstances on which they are based, as set out in Parts 2, 4, 6, and 8 of Exhibit 4 pertaining respectively to the Tolstoy, O'Day, Farner, and Sweet moves and showing the charges paid respondent, the correct rates and charges, and the applicable refunds and penalties due, are true and correct.

13. Respondent overcharged the shipper in the Tolstoy move in the amount of \$684.83.

14. Respondent overcharged the debtor in the O'Day move in the amount of \$14.60.

15. Respondent overcharged the shipper in the Farner move in the amount of \$135.26.

16. Respondent overcharged the debtor in the Sweet move in the amount of \$192.30.

17. Respondent overcharged the shipper in the Hall move in the amount of the difference between the amount of charges paid (\$1,035.93) and the applicable minimum rates (\$991.80), or \$44.13.

18. The shippers involved in the Weiss, James, Mahaffey, Mahoney, Cook, and Thornton moves were not overcharged.

Conclusions of Law

1. Respondent violated Sections 5139, 5193, 5196, and 5245 of the Public Utilities Code by failing to comply with the estimating and documentation rules set forth in Items 31, 31.1, 33.5, 33.7, 145, and 155 of the tariff in connection with the Tolstoy, O'Day, and Sweet moves.

2. Respondent should be ordered to refund the overcharges to the persons and in the amounts set out in Findings 13, 14, and 16.

3. Respondent should be ordered to pay to the Commission an underestimating penalty in the amount of \$197.68 pursuant to the provisions of Item 33.7 of the tariff in connection with the O'Day move.

4. Respondent should be ordered to pay to the Commission an underestimating penalty in the amount of \$177.13 pursuant to the provisions of Item 33.7 in connection with the Sweet move.

5. Respondent has violated Sections 5139, 5193, and 5196 of the Public Utilities Code by failing to comply with the documentation rules set forth in Item 145 of the tariff in connection with the Farner and Hall moves.

6. Respondent should be ordered to refund the overcharges to the persons and in the amounts set out in Findings 15 and 17.

7. Respondent should be ordered to cease and desist from any and all operations and practices of the nature found herein to be in violation of the Public Utilities Code.

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 Public Utilities Code Section 5285 on or before the fortieth day after the effective

date of this order. Respondent shall pay interest at the rate of seven percent per annum on the fine; such interest is to commence upon the day the payment of the fine is delinquent.

2. Respondent shall pay penalties to this Commission pursuant to Items 33.7 of Minimum Rate Tariff 4-B in the sum of \$374.81 on or before the fortieth day after the effective date of this order.

3. Respondent shall refund the overcharges to the persons and in the amounts set out in Findings 13, 14, 15, 16, and 17 no later than sixty days after the effective date of this order.

4. Within fifteen days after the maximum time for payments set out in Ordering Paragraph 3, respondent shall notify the Commission of respondent's action taken in respect to such payments.

The effective date of this order shall be thirty days after the date hereof.

Dated OCT 8 1980 , at San Francisco, California.

John E. Bryan
President

Gregory L. Sturgeon

Michael D. Howell

Donald M. Quinn
Commissioners

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