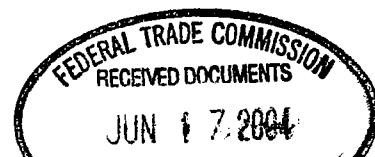


UNITED STATES OF AMERICA



In the Matter of)

KENTUCKY HOUSEHOLD GOODS CARRIERS)
ASSOCIATION, INC.)
a corporation)

Docket No. 9309

POST-TRIAL BRIEF OF INTERVENING

RESPONDENT KENTUCKY TRANSPORTATION CABINET

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THROUGH TARIFF FILINGS AND COLLECTIVE RATEMAKING.**
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I. INTRODUCTORY STATEMENT

The Commonwealth of Kentucky Transportation Cabinet (KTC) has intervened in this matter to protect its statutes and regulations and its active supervision of the tariff filing activity for over 45 years. In over 45 years no complaint has been made by any person regarding the Kentucky Household Goods Carrier's Association's (Association) tariff rates. There is no evidence that upon receipt of any proposed tariff rate by the Association that it was inappropriate or unreasonable. Lastly, and most importantly, there is no evidence that any person has suffered economic harm as a result of the state plan established by the Kentucky Legislature.

FIVE POSITION OF THE KENTUCKY TRANSPORTATION CABINET

relief from its common law liability.

*Statutes Actively Administered
By KTC*

Chapter 281 of the Kentucky Revised Statutes ("KRS") contains the principal provisions governing the regulation of motor carriers of household goods in the Commonwealth of Kentucky.

KRS 281.010 contains definitions including "certificate" "interstate commerce"

"intrastate commerce", and "property".

KRS 281.011 contains definitions including "carrier", "motor carrier", "motor vehicle", "common carrier", "irregular route common carrier".

KRS 281.590 contains definitions including "Declaration of Policy" ("Kentucky State Transportation Policy")

maintenance of transportation charges;

16. to cooperate with the several states and the duly authorized officials thereof; and

17. to do all the foregoing to the end of (a) developing; (b) coordinating; and (c) preserving, a state transportation system by motor vehicles as defined in Chapter 281 adequate to meet the needs of the Commonwealth of Kentucky.

KRS 281.500 provides that all of the provisions of Chapter 281 must be administered and

provide the following: (a) the name, position, and address of the person to whom the information is to be provided;

KRS 280.680(2) requires that a contract carrier's transportation contracts must be maintained on file with the department and requiring that the contract carrier must "have open accounts."

inspection at designated offices such contracts as the department deems necessary for public information." The subsection further provides that the foregoing shall take place "[u]nder administrative regulations promulgated by the department under KRS Chapter 13A." [Emphasis added.]

KRS 281.680(2) provides that "[t]he department shall have full power controlling the rates and contracts under its administrative regulations." [Emphasis added.]

KRS 280.680(4) provides the following:

1. the department must establish **collective ratemaking procedures**;
2. the department's **collective ratemaking procedures** must apply to all (a) commodities, and (b) services; for which the department **prescribes (i) rates; (ii) charges; and (iii) classifications** [Emphasis added.];
3. the department's **collective ratemaking procedures** must assure that the revenues and costs of carriers are ascertained [Emphasis added.]; and
4. the department's **collective ratemaking procedures** must be established for the purpose of "ensuring non-discriminatory rates, charges, and classifications for all shippers and users of transportation services for which the department **prescribes rates.**" [Emphasis added.]

KRS 281.685(1) prohibits a common carrier or irregular route common carrier of

proposed effective date by an order stating the reasons for the suspensions; and

3. the department must determine the just and reasonable rate if it finds the rate to be objectionable after hearing.

KRS 281.695(1) provides that the department has the authority to fix and approve common carrier rates and insure adequate and convenient transportation service. In the event that the department finds a rate to be objectionable after a hearing, the department may determine the just and reasonable rate. (The section also allows the department to order that adequate service be provided after a hearing.)

KRS 281.700 governs the abandonment or change of the route or service of a common carrier.

KRS 281.705 authorizes the department to prescribe uniform systems of accounts and the

filing of reports by motor carriers.

KRS 281.880 establishes a motor carrier safety management audit program applicable to intrastate motor carriers and authorizes the issuance of motor carrier safety ratings.

KRS 281.900 establishes the Kentucky Motor Carrier Advisory Committee and prescribes its functions and methods of operation.

KRS 281.905 contains further information regarding the operations of the Kentucky Motor Carrier Advisory Committee including its (a) duties (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) (q) (r) (s) (t) (u) (v) (w) (x) (y) (z) (aa) (ab) (ac) (ad) (ae) (af) (ag) (ah) (ai) (aj) (ak) (al) (am) (an) (ao) (ap) (aq) (ar) (as) (at) (au) (av) (aw) (ax) (ay) (az) (ba) (bb) (bc) (bd) (be) (bf) (bg) (bh) (bi) (bj) (bk) (bl) (bm) (bn) (bo) (bp) (bq) (br) (bs) (bt) (bu) (bv) (bw) (bx) (by) (bz) (ca) (cb) (cc) (cd) (ce) (cf) (cg) (ch) (ci) (cj) (ck) (cl) (cm) (cn) (co) (cp) (cq) (cr) (cs) (ct) (cu) (cv) (cw) (cx) (cy) (cz) (da) (db) (dc) (dd) (de) (df) (dg) (dh) (di) (dj) (dk) (dl) (dm) (dn) (do) (dp) (dq) (dr) (ds) (dt) (du) (dv) (dw) (dx) (dy) (dz) (ea) (eb) (ec) (ed) (ee) (ef) (eg) (eh) (ei) (ej) (ek) (el) (em) (en) (eo) (ep) (eq) (er) (es) (et) (eu) (ev) (ew) (ex) (ey) (ez) (fa) (fb) (fc) (fd) (fe) (ff) (fg) (fh) (fi) (fj) (fk) (fl) (fm) (fn) (fo) (fp) (fq) (fr) (fs) (ft) (fu) (fv) (fw) (fx) (fy) (fz) (ga) (gb) (gc) (gd) (ge) (gf) (gg) (gh) (gi) (gj) (gk) (gl) (gm) (gn) (go) (gp) (gq) (gr) (gs) (gt) (gu) (gv) (gw) (gx) (gy) (gz) (ha) (hb) (hc) (hd) (he) (hf) (hg) (hh) (hi) (hj) (hk) (hl) (hm) (hn) (ho) (hp) (hq) (hr) (hs) (ht) (hu) (hv) (hw) (hx) (hy) (hz) (ia) (ib) (ic) (id) (ie) (if) (ig) (ih) (ii) (ij) (ik) (il) (im) (in) (io) (ip) (iq) (ir) (is) (it) (iu) (iv) (iw) (ix) (iy) (iz) (ja) (jb) (jc) (jd) (je) (jf) (jg) (jh) (ji) (jj) (jk) (jl) (jm) (jn) (jo) (jp) (jq) (jr) (js) (jt) (ju) (jv) (jw) (jx) (jy) (jz) (ka) (kb) (kc) (kd) (ke) (kf) (kg) (kh) (ki) (kj) (kk) (kl) (km) (kn) (ko) (kp) (kq) (kr) (ks) (kt) (ku) (kv) (kw) (kx) (ky) (kz) (la) (lb) (lc) (ld) (le) (lf) (lg) (lh) (li) (lj) (lk) (ll) (lm) (ln) (lo) (lp) (lq) (lr) (ls) (lt) (lu) (lv) (lw) (lx) (ly) (lz) (ma) (mb) (mc) (md) (me) (mf) (mg) (mh) (mi) (mj) (mk) (ml) (mm) (mn) (mo) (mp) (mq) (mr) (ms) (mt) (mu) (mv) (mw) (mx) (my) (mz) (na) (nb) (nc) (nd) (ne) (nf) (ng) (nh) (ni) (nj) (nk) (nl) (nm) (nn) (no) (np) (nq) (nr) (ns) (nt) (nu) (nv) (nw) (nx) (ny) (nz) (oa) (ob) (oc) (od) (oe) (of) (og) (oh) (oi) (oj) (ok) (ol) (om) (on) (oo) (op) (oq) (or) (os) (ot) (ou) (ov) (ow) (ox) (oy) (oz) (pa) (pb) (pc) (pd) (pe) (pf) (pg) (ph) (pi) (pj) (pk) (pl) (pm) (pn) (po) (pp) (pq) (pr) (ps) (pt) (pu) (pv) (pw) (px) (py) (pz) (qa) (qb) (qc) (qd) (qe) (qf) (qg) (qh) (qi) (qj) (qk) (ql) (qm) (qn) (qo) (qp) (qq) (qr) (qs) (qt) (qu) (qv) (qw) (qx) (qy) (qz) (ra) (rb) (rc) (rd) (re) (rf) (rg) (rh) (ri) (rj) (rk) (rl) (rm) (rn) (ro) (rp) (rq) (rr) (rs) (rt) (ru) (rv) (rw) (rx) (ry) (rz) (sa) (sb) (sc) (sd) (se) (sf) (sg) (sh) (si) (sj) (sk) (sl) (sm) (sn) (so) (sp) (sq) (sr) (ss) (st) (su) (sv) (sw) (sx) (sy) (sz) (ta) (tb) (tc) (td) (te) (tf) (tg) (th) (ti) (tj) (tk) (tl) (tm) (tn) (to) (tp) (tq) (tr) (ts) (tt) (tu) (tv) (tw) (tx) (ty) (tz) (ua) (ub) (uc) (ud) (ue) (uf) (ug) (uh) (ui) (uj) (uk) (ul) (um) (un) (uo) (up) (uq) (ur) (us) (ut) (uu) (uv) (uw) (ux) (uy) (uz) (va) (vb) (vc) (vd) (ve) (vf) (vg) (vh) (vi) (vj) (vk) (vl) (vm) (vn) (vo) (vp) (vq) (vr) (vs) (vt) (vu) (vv) (vw) (vx) (vy) (vz) (wa) (wb) (wc) (wd) (we) (wf) (wg) (wh) (wi) (wj) (wk) (wl) (wm) (wn) (wo) (wp) (wq) (wr) (ws) (wt) (wu) (wv) (ww) (wx) (wy) (wz) (xa) (xb) (xc) (xd) (xe) (xf) (xg) (xh) (xi) (xj) (xk) (xl) (xm) (xn) (xo) (xp) (xq) (xr) (xs) (xt) (xu) (xv) (xw) (xx) (xy) (xz) (ya) (yb) (yc) (yd) (ye) (yf) (yg) (yh) (yi) (yj) (yk) (yl) (ym) (yn) (yo) (yp) (yq) (yr) (ys) (yt) (yu) (yv) (yw) (yx) (yz) (za) (zb) (zc) (zd) (ze) (zf) (zg) (zh) (zi) (zj) (zk) (zl) (zm) (zn) (zo) (zp) (zq) (zr) (zs) (zt) (zu) (zv) (zw) (zx) (zy) (zz)

certificates of good standing if applicant is a corporation (4) ~~...~~

foreign corporation; and (5) financial statement. The section also addresses, among other things, (a) temporary authority applications; (b) approval of transfer of certificates; and (c) registration of interstate

8. powers of attorney and concurrences must be provided to a tariff publishing agent and filed with KTC;

9. an Adoption Notice must be filed with KTC upon sale or other

disposition of a motor carrier certificate;

10. tariff rules affecting common carriers of property and irregular route common carriers of specific commodities may include items regarding the following: (a) reasonable joint through rates; (b) commodity rates & exception ratings; (c) interchange of freight; (d) bill of lading; (e) collection of freight charges; and (f) handling of c.o.d. shipments.

601 KAR 1:060(5) requires that “[all] tariff publishing agencies doing business in Kentucky and publishing Kentucky intrastate rates, fares, or charges shall file a statement giving the name of the manager or secretary of such agency.

601 KAR 1:070(c) contains the requirements for changes in tariff rates and charges by household goods carriers. The requirements include the following:

1. at or immediately prior to the time of filing the tariff or supplement containing the proposed changes rate or charge, the carrier must **“notify all competing and connecting carriers having a situs within fifty (50) miles of his situs of such change;**
2. **“[s]imilar notice must be given to any shipper or interested party requesting same”;** and
3. **“if the change in the rates and charges involves an increase, then he shall also, and at the same time, cause a notice to be printed in a newspaper of general circulation in the area of his situs which shall give notice of the proposed increases, the old rates and charges, the proposed rates and charges, and which shall state that any interested party may protest said increase by filing a protest with**

lists of interested persons who must be provided with notice of tariff changes.

601 KAR 1L075 contains rules governing the presentation and handling of claims for loss and damage to transported property by regular and irregular route common carriers (i.e., household goods carriers.)

610 KAR 1:080(1) contains provisions relating to the determination of weights by household goods carriers. The subsection includes specific requirements relating to (1) tare weight (2)

included thereon.

601 KAR 1:0808(7) contains provisions relating to the issuance of a Freight Bill, at the time of delivery of goods by household goods carriers, and the information which must be included thereon.

601 KAR 1:080(8) provides that a common carrier may not contract to avoid its common law liability as a carrier.

601 KAR 1:080(9) contains provisions governing the providing of estimates for households goods transportation services to shippers. The requirements for a household goods carrier's

1. the estimate can be made only after a visual inspection of the goods by the estimator;
2. the estimate must be on a form approved by KTC;
3. the estimate form must be fully executed in accordance with the instructions thereon;
4. the original or a legible copy of the estimate form must be delivered to the shipper;
4. a copy of the estimate must be maintained by the carrier as part of the records of the shipment;

6. the shipper is not required or permitted to sign an "Estimated Cost of Services" Form;

7. carriers may furnish documents to assist the shipper in the estimating process including a form containing average weights of pieces of furniture provided that if an average weight is used, the weight must be seven (7) pounds per cubic foot;
8. the carrier must comply with requirements regarding notification regarding actual weight and changes on a shipment;
9. notice must be given to the shipper where charges exceed estimate by

601 KAR 1:0808(12) prohibits a household goods carrier from accepting a household

goods shipment for transportation which appears to be subject to the minimum weight provision in the

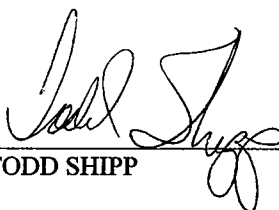
CERTIFICATE OF SERVICE

This is to certify that on June 15, 2004, I caused the original and two copies of the Post Trial Brief to be served upon the following person by US Mail:

Office of the Secretary
Federal Trade Commission
Room 159
600 Pennsylvania Ave., NW
Washington, DC 20580
FAX (202) 326-2496

For filing; and a true copy was sent by first-class mail, postage pre-paid to:

Hon. Richard B. Dagen
Associate Director
Federal Trade Director
601 New Jersey Ave
Rm 6264
Washington, DC 20580



J. TODD SHIPP