Decision 10-01-027 January 21, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of California Moving and Storage Association requesting Elimination of Maximum Rate Tariff 4 Region 1 and Territories B and C for the State Purpose of Tariff Simplification. Petition to adopt, amend, or repeal a regulation pursuant to Public Utilities Code Section 1708.5.	Application 08-03-005 (Filed March 5, 2008)

DECISION REVISING MAXIMUM RATES AND CHARGES IN COMMISSION MAXIMUM RATE TARIFF 4

Table of Contents

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Summary

Maximum Rate Tariff 4 Naming Maximum Rates and Rules for the Transportation of Used Property, Namely: Household Goods and Personal Effects over the Public Highways within the State of California by Household Goods Carriers, effective July 23, 1998, is revised and simplified in accordance with a joint proposal by petitioner/applicant California Moving and Storage Association and the Commission's Division of Ratepayer Advocates, as follows:

- Hourly rate Territory C is eliminated, and Territory C counties are incorporated into current Territory B.
- Distance rate Region 1 is eliminated, and Region 2 rates are applicable to the entire state.
- The productivity offset factor used in making annual rate adjustments is reset from .667 (the current factor) to .95 for five years, effective with the tariff increase in January 31, 2010.
- Commencing with the tariff increase in January 2015, the productivity offset factor will be re-evaluated and reset every two years. If productivity change is positive, the productivity offset factor will be set at .85; if productivity change is negative, it will be set at .95.

Application 08-03-005 is closed.

1. Procedural History

California Moving and Storage Association (CMSA), a trade association of persons, firms, and corporations engaged in the transportation of used household goods in California,[1] filed Application (A.) 08-03-005 to request that

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[1] Intrastate used household goods movers are regulated by the Commission.

the Commission revise *Maximum Rate Tariff 4 Naming Maximum Rates and Rules for the Transportation of Used Property, Namely: Household Goods and Personal Effects over the Public Highways within the State of California by Household Goods Carriers*, (MAX 4) by eliminating Region 1 and Territories B and C, which are geographical subdivisions that define areas of maximum allowable rates for long distance and hourly rate moving services. The reason underlying CMSA's request is its claim that certain inequities in the maximum rate structure have resulted from changes in the state's demographics since MAX 4 was initially adopted. The effect of granting CMSA's application would also be to streamline the MAX 4 tariff.

CMSA relies upon Public Utilities Code Section 5191 as authority for the Commission to grant the proposed adjustments to MAX 4 in response to the application. That statute directs the Commission to establish or approve just, reasonable, and nondiscriminatory maximum or minimum (or maximum *and* minimum) rates to be charged by household goods carriers for transportation of used household goods and associated accessorial services, but does not expressly establish a procedure for revising those rates. Although the application is in the nature of changing an industrywide regulation, rather than granting an individual carrier's request for relief, the Commission's Division of Ratepayer Advocates (DRA) filed a protest challenging the sufficiency of the application, because it lacked certain information ordinarily required from an individual applicant. The alleged deficiencies included the lack of applicant's balance sheet and financials, and other information that pertains to a company or individual, but not to a trade group with hundreds of members. Consequently, on August 6, 2008, the assigned Commissioner and Administrative Law Judge (ALJ) issued a joint ruling that the application would be treated as though it were a petition for rulemaking.[2]

CMSA filed an amended application and broadened the service of the amended document in accordance with requirements of the ruling.[3] DRA filed a timely Response that essentially objected to the projected increases in maximum hourly rates in 49 of the state's 58 counties (those in Territories B and C), and in weight/distance-rated moves in Region 1, the most heavily trafficked coastal area of the state. DRA asserted that to justify such a result, the Commission needed information concerning current market pricing practices to insure that any new maximum rates would not be excessive, and thus, to protect consumers.

To satisfy the need for evidentiary support and critical analysis, DRA recommended the performance of a freight bill (F/B) survey and a cost and operational (C&O) information survey. These survey methods were used to collect and evaluate data following the Commission's initial implementation of MAX 4, and were expected to enable the Commission to verify the basis for CMSA's request, and perhaps evaluate possible alternatives, such as adjusting the boundaries of the existing territories and regions as needed, rather than eliminating them altogether.

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2 Under the terms of the ruling, and by implementing resolution issued by the Commission (Resolution ALJ-223, August 29, 2008), the proceeding was also recategorized from a ratesetting to a quasi-legislative proceeding, consistent with its treatment as a rulemaking.

3 The Commission received, and in some instances filed, numerous written documents indicating support for both the initial and amended applications from CMSA members. Except for DRA's Response, the Commission received no indication of opposition to CMSA's proposals to change the MAX 4 tariff.

Although DRA's Response initially provoked a dispute with CMSA concerning the extent of data required to evaluate the proposed MAX 4 revisions, DRA and CMSA were eventually able to agree upon satisfactory F/B and C&O surveys, the format and content of which were reviewed and approved by both DRA and the ALJ. CMSA delivered the results of the surveys, including a summary spreadsheet, to DRA on June 30, 2009. The ALJ permitted both parties a full opportunity to analyze and discuss the survey results, and ruled that the proceeding would be submitted, closing public comment, as of August 14, 2009.[4]

DRA and CMSA filed a single set of joint comments on the proposal on August 14. The comments were based upon their respective review and analysis of the survey data, as well as subsequent discussions to reach a consensus concerning recommended action to revise MAX 4.

2. Background

The present system of regulation of hourly and distance rates in the used household goods moving industry under a maximum rate framework was first established in 1990 as part of Investigation (I.) 89-11-003. At that time, the Commission shifted from a system of minimum rate regulation to one of maximum rate regulation that better reflected contemporary market conditions and consumer protection requirements. The final rates and rules embodied in MAX 4, which is a comprehensive regulation that contains many consumer protection requirements such as contract forms, notice requirements, and rules regarding billing, carriage and collection of charges in addition to rate caps and

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[4] Subsequent preparation of the proposed decision was delayed because the ALJ was on medical leave during October and part of November 2009.

floors, were adopted in Decision (D). 92-05-028 in I.89-11-003, (1992) 44 CPUC2d 211.

In general terms, there are two types of rates in MAX 4: hourly rates, which are rates charged by the hour that apply to moves of 100 or fewer constructive miles,[5] and distance rates, which are based upon shipment weight and length of haul. Hourly rates apply to what are generally called "local" moves, and distance rates primarily apply to moves of more than 100 constructive miles, or on shorter moves where the use of distance rates result in lower charges than those under hourly rates.[6]

MAX 4 defines three hourly-rate territories, which are identified as A, B and C. Territory A is the highest-rate territory, and C is the lowest. These territories were established on the basis of carrier costs at the county level. Under MAX 4 Items 210 and 230, Territory A comprises eight San Francisco Bay Area counties, plus Monterey County; Territory B comprises eight Southern California counties; and Territory C encompasses the remaining 41 counties.

There are two distance-rate regions under MAX 4 Items 220 and 240, which are defined as Regions 1 and 2. Region 1 is the coastal region from San Francisco Bay to Sacramento, thence south, including Fresno, Bakersfield, Los Angeles, the city of San Bernardino, and San Diego. Region 2 encompasses the remaining parts of the state, namely the area north of the Bay Area and Sacramento, the Sierra Nevada, and the southern desert areas. Region 1 rates are

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[5] Constructive miles are highway engineered, i.e, constructed, to account for road conditions such as terrain, altitude and traffic congestion. Constructive miles are generally greater than actual highway miles.

[6] Historically, the Commission has found that local moves account for 80 to 85 percent of moves within the state.

slightly lower than Region 2 rates. The regions were established on the basis of carrier operating costs, additionally considering population, traffic patterns, and volume of moving activity. Higher volumes and load factors in the coastal area, especially between the San Francisco Bay Area and the Los Angeles metropolitan area, produced lower costs, and thus lower rates, in Region 1.[7]

The maximum rate regions and territories were initially created in minimum-rate tariffs before the advent of MAX 4, and with the exception of moving Sonoma County into Territory A in 1983, the Commission has not redefined the geographical boundaries of these areas for 40 years.[8]

Since 1996, section 5191 of the Public Utilities Code has required MAX 4 rate levels to be adjusted annually, using an indexing method that the Commission relied upon to establish the initial MAX 4 rates. Under Resolution TL-19093, the rates are adjusted for inflation by formula, but the increases are offset by a "reasonable percentage" to encourage higher productivity and promote efficiency and economy of operation by household goods carriers. Thus, if inflation is determined by formula to be X percent in a given year, rates are offset by a productivity factor that reduces the upward revision to a percentage lower than X. In practice, this has resulted in

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[7] MAX 4 Items 300 and 310 set forth the maximum rates for distance moves from one residence or business location to another. Items 380 and 390 contain the maximum rates for distance moves to or from places of storage. Items 300 and 380 are for Region 1, and Items 310 and 390 are for Region 2.

[8] In addition to local and long distance moves, MAX 4 contains maximum rates for accessorial services, some of which are charged by the hour and are consequently included in the proposal to revise the tariff. Accessorial services in the tariff include packing and unpacking of goods, appliance servicing (preparation for transport) and disassembly and reassembly of large or complicated items.

compression of operating costs against the ceiling rates in certain geographical areas where the cost of living has risen substantially since 1992.

3. CMSA's Proposal to Revise MAX 4

CMSA's amended application proposes the elimination of hourly (local) rate Territories B and C, and distance (weight/distance) rate Region 1 from MAX 4. This would be accomplished by removing all maximum rates applicable to Territories B and C and Region 1, along with all tariff references to hourly rate territory and distance rate regional distinctions, essentially resulting in one hourly rate scale and one distance rate scale applicable statewide.[9]

CMSA advances several arguments in support of its proposed revisions to MAX 4. The rationale for its recommendation is that the demographics of California have changed dramatically since the Commission's initial adoption of the regional and territorial boundaries, so that changing those boundaries is necessary to prevent cost and pricing anomalies. From the consumer's standpoint, CMSA contends that its recommended revisions would make MAX 4 more comprehensible and increase the ease of comparison shopping in relation to the allowable maximum rates. CMSA also observes that the tariff would be easier for Commission staff to administer and enforce because of its greater simplicity. Finally, a simplified tariff would be more amenable to technical application, for example by promoting the implementation of an interactive application on the Commission's website that would enable a consumer to research the maximum cost of a move and compare it to movers' estimates.

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[9] Actually, two distance rate scales would remain (Items 310 and 390), both for distance moves in or through Region 2. Item 390 distance rates are for moves to and from storage, and are stated separately from ordinary distance move rates.

3.1. THE CMSA/DRA Joint Recommendation

The joint comments filed by CMSA and DRA following their collaborative effort to generate data about the existing maximum rate framework recommend four changes to MAX 4. Although these changes are not identical to CMSA's initial proposal, they reflect a well-supported consensus that the existing tariff boundary lines are outdated and require modification, and that in certain limited respects adjustments to the maximum rate formula are required. The specific joint recommendations are as follows:

1. Eliminate hourly rate Territory C; incorporate current Territory C counties into current Territory B.
2. Eliminate distance rate Region 1; establish Region 2 rates as applicable to the entire state.
3. Reset the productivity offset factor used in making annual rate adjustments from .667 (the current factor) to .95 for five years, effective with the tariff increase in January 2010.
4. Beginning in 2015, re-evaluate and reset the productivity offset factor every two years. If productivity change is positive, the productivity offset factor should be set at .85; if productivity change is negative, it should be set at .95.[10]

3.2. Factual Support for Revising MAX 4

With the concurrence of DRA, CMSA conducted two surveys of its approximately 430 carrier members. The surveys were contained in a single package, and consisted of a C&O survey and an F/B survey, as described above. The surveys covered calendar year 2008. The C&O survey consisted of

[10] In accordance with current Commission practice, the parties anticipate that the initial re-evaluation and subsequent biennial reviews will be conducted by the Commission's Consumer Protection and Safety Division (CPSD).

questions about carrier operations, labor costs, and pricing. The F/B survey requested copies of carrier freight bills for moves conducted on specific days. The goal of the surveys was to collect information about carriers' operating and pricing practices, with emphasis on market pricing.

DRA and CMSA agree that the survey responses provide sufficient information to draw general conclusions for the purposes of this proceeding. The data and conclusions they developed are set forth below.

3.3. Cost and Operations Survey

The Cost and Operations (C&O) survey asked for information about a carrier's geographic area of operation, number and types of moves, number and classifications of employees, employee base wages, pricing, and price discounting practices. Eighty-three carriers responded, representing about 19 percent of carriers surveyed and 7.1 percent of the licensed household goods carriers that reported revenue in 2008. These carriers were in the small, medium, and large reported-revenue categories and included both van lines and carriers not affiliated with van lines. The reported revenues ranged from $3,000 to $7.8 million, and average $687,000 per carrier. The carriers represent a wide geographic distribution around the state.

3.4. Labor Costs

The C&O survey requested wage data for six job categories. These included two office categories (Clerical and Dispatch) and four categories of moving crew members (CDL driver, which is a higher-skill category requiring operation of larger tractor-trailer vehicles; Class C driver; Packer; and Helper). DRA analyzed the underlying labor costs that were originally used to assign particular counties to the three MAX 4 territories for hourly-rate moves to produce current labor costs.

The survey results showed that differences in average wage costs between and among current MAX 4 hourly rate territories correspond with the current maximum rates. In other words, average wages for Territory A were higher than those in Territory B, which were higher than those in Territory C. The same is true for maximum rates. However, there were great variations in the ranges of wages paid within territories, and even within counties.

For example, DRA examined Santa Barbara and San Luis Obispo Counties, which CMSA had identified as those with movers' hourly rates that are compressed against the Territory C MAX 4 limits.[11] DRA's examination of Territory C carriers' freight bills showed that the carriers charging rates of 95 percent to 100 percent of the MAX 4 rates were from Santa Barbara, San Luis Obispo, and Stanislaus Counties. These results strongly indicate the existence of high labor rate pockets in otherwise low labor rate counties, indicating a need to consider average labor costs in Territory C in combination with wage ranges and market pricing for this territory.

3.5. Market Prices

In addition to labor costs, actual carrier pricing was found to be useful in determining whether territorial boundaries should be changed. The reason is that the household goods moving industry is competitive in virtually every market, and market prices consequently reflect total carrier costs. The survey analysis concluded that wage costs on average appear to reflect existing territorial patterns, but analyzing market prices complements the cost analysis.

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[11] One Santa Barbara County mover paid substantially above the Territory C average wage, and one San Luis Obispo County mover paid somewhat more than the average wage.

3.6. Freight Bill Survey

The F/B survey asked carriers to submit a copy of every freight bill for moves occurring on two specified days in 2008. One day was in the typical off-season for moving, and the other was for a day during the heavy summer moving season. The purpose was to observe actual carrier pricing behavior to determine market prices, giving particular attention to prices relative to maximum rates. The 54 carriers that responded by submitting freight bill summaries and/or actual freight bills comprise about 12.5 percent of all carriers surveyed and 4.6 percent of the licensed household goods carrier population in 2008. In terms of revenues, the responses represented 12.7 percent of total industry revenue for 2008. The responding carriers were in the small, medium and large reported-revenue categories, and their revenues ranged from $150,000 to $7.8 million and averaged $771,000. The responses comprised freight bills for all three hourly rate territories and both distance rate regions.

The F/B survey showed that, for the most part, carriers are generally charging rates appreciably below maximum rates, whether hourly or distance. The exception is hourly rate Territory C, where carriers are charging at or near the territory's maximum rates to a much greater extent than carriers in the other two territories. A result that was not expected by the parties is that carriers in Territory C typically charged higher rates than carriers in Territory B. Equalizing the maximum rates in these two territories to eliminate this discrepancy would eliminate one set of rates altogether, and leave two hourly rate territories, A and B. The parties found that the Territory B maximum rate would provide an adequate ceiling for former Territory C carriers, and preserve the consumer protection concept envisioned by the Commission, as only maximum rates, and not market prices, would be affected.

Maximum rate levels between Territories A and B differ significantly, and market pricing indicates even greater differences between these two territories. The maximum rate differences between these territories range from 4.75 percent for a vehicle plus driver (Van + 1) to 15.9 percent for a helper. For packers, who are a significant factor in many moves, the difference in rates is 13.4 percent. The typical comparison rate is that for a vehicle plus driver and helper (Van + 2); the difference in that rate between Territories A and B is 8.4 percent. The average observed difference between actual market prices for Van + 2 in the two territories is approximately 20 percent. The parties concluded that Territories A and B are significantly different in both market pricing and maximum rate levels.

3.7. Distance Rate Regions

The F/B survey results showed that most carriers charge well below maximum rates in both regions, although a greater proportion of moves were at or near maximum rates in Region 1 than in Region 2. The results support the proposition that eliminating Region 1, as proposed, will have no appreciable negative economic effect upon consumers.

A comparison of the maximum fixed distance rates of Region 1 (Item 300) and Region 2 (Item 310) reveals that the maximum rates of Region 1 are in the range of 91 to 100 percent of those of Region 2. The parties do not regard this difference as being at the level of significance. The F/B survey, as well as MAX 4 monitoring studies conducted by the Commission between 1992 and 1994, indicate that approximately 80 percent of moves conducted under MAX 4 are hourly rate moves. The impact of altering the long distance maximum tariffs would therefore potentially affect only about one fifth of all moves we regulate. Moreover, a footnote to Max 4 Items 310 and 320 provides that, where the point of origin and destination are in different regions, the higher Region 2 rates apply, further mitigating the potential impact of merging the regional rates. Additionally, although some carriers are assessing charges at or near maximum distance rates, the survey indicates that the overwhelming majority are pricing distance moves at discounts of 12 to 50 percent below MAX 4 maximum distance rates for either region.[12]

Overall, these results indicate that most intra-Region 2 moves are occurring at rates that would fit within the Region 1 maximums; intra-Region 1 moves are generally provided at rates below those maximums; and distance moves between the two regions are already governed by Region 2 maximum rates. Consequently, the potential effect of eliminating Region 1 would be small, and retaining the somewhat higher Region 2 rates is preferable, in the parties' view, in order to provide pricing flexibility to carriers in Region 1 that are struggling with compression of costs against the current maximum rates.

3.8. The Productivity Offset Factor

Public Utilities Code Section 5191, subdivision (d), requires the Commission to adjust annually the maximum rates for household goods transportation. Pursuant to this requirement, since 1998 MAX 4 has been adjusted for inflation each January, but subject to a downward offset to "encourage higher productivity and promote efficiency and economy of operation by household goods carriers." (*Id.*) The present formula for increasing maximum rates consists of two parts: First, the average annual change in the Consumer Price Index for All Urban Consumers (CPI-U) in the Los Angeles and

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[12] Carriers charging maximum or near-maximum rates are those conducting moves wholly within Region 1.

San Francisco Bay metropolitan areas; and second, a reasonable percentage reduction (productivity offset factor) to encourage productivity.

The productivity offset factor was derived from the average annual trucking productivity data for the period from 1970 through 1989, a period of net productivity gains, adjusted specifically for household goods transportation. The adopted factor is .669, which means that a given increase in CPI-U is reduced by that factor to yield the percentage increase in maximum rates for the year. Maximum rates have thus been increased by about 67 percent of the CPI-U each year since 1998. It has been more than 20 years since the current industry productivity element was calculated for use in indexing rate increases,[13] and it has never been reviewed or updated. Recent data show that the current productivity offset factor is no longer accurate.

Since the productivity offset factor was first calculated, the federal Bureau of Labor Statistics (BLS) has developed a new index more appropriate for the household goods transportation sector, and BLS productivity data suggest that the Commission's annual increases to maximum rates may have been inadequate for several years due to assumed productivity gains in household goods moving that have been too great. DRA and CMSA agree that the productivity offset factor should be updated in this proceeding. They recommend that the Commission reset the factor for the purpose of annual recalculation of MAX 4 rates, taking into account more recent data that reflect the BLS "Used household and office goods moving" sector, North American

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[13] See *Resolution TL-18831(January 21, 1998).*

Industrial Classification System (NAICS) 48421.[14] During the 1987 – 2007 period this data series shows an overall decline in mover productivity, indicating that the MAX 4 productivity assumptions relied upon by the Commission have been exaggerated since 1998.

Whether analyzed for the entire 1987 – 2007 period or for the most recent two peak-to-peak business cycles, the NAICS 48421 data indicate a negative productivity trend, despite some positive increase in recent years. The parties agree that maximum rates therefore need adjustment to compensate for the years of overstated productivity that produced inordinate reductions from cost-of-living changes.

Relying upon the National Bureau of Economic Research (NBER) dating of economic peaks, the parties found that the 1990 – 2007 two-peak period was marked by a negative 1.2 percent average annual productivity change for the sector. For the entire 1987 – 2007 period it is a negative 0.7 percent.[15] In recognition of these trends, DRA and CMSA propose that the current productivity offset factor be revised from the present .669 figure to .95, effective with the regular tariff rate adjustment in January 2010, and be maintained at that level for a period of five years. At the end of that period, i.e., commencing in January 2015, the parties recommend that the Commission annually update the

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[14] Appendix E of the Joint Comments provides statistical support for this recommendation. This data series includes productivity for a mix of long- and short-haul movers. Although DRA and CMSA agree that the NAICS 48421 series must be approached critically because used office equipment moving and national interstate movers are encompassed, they concur that it "far better reflects the industry sector than the existing productivity offset factor." (Joint Comments, p. 12, fn. 20.)

[15] The most recent peak-to-peak period from 2001 to 2007 saw a 1.8% average annual gain.

factor, utilizing NAICS data. They recommend that the period of time that should be used in doing so is that encompassing the two most recent full U.S. business cycles as determined by NBER.[16]

Under the methodology proposed by the parties the industry would receive no less than 85 percent and no more than 95 percent of CPI-U increases, depending upon the productivity offset factor produced by biennial recalculation of the factor. They emphasize that the increases would directly affect only the Commission's maximum rates, but would not directly affect market prices, which typically are below those maximums.

4. Discussion

The need for revision of the existing MAX 4 distance and hourly rate boundaries is clear from the record in this proceeding. Changing demographics have resulted in urbanization and higher costs in some geographical areas since the present boundaries were established, and the Commission has not reexamined the underlying data for many years. Declining to make appropriate

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[16] This NBER information can be obtained online at http://www.nber.org/cycles. The methodology suggested in the Joint Comments is as follows:

> As the five-year period of the .95 productivity factor nears its end in 2014, Commission staff should first retrieve the NBER calculation … of the last two full business cycles, either peak-to-peak or trough-to-trough, whichever is the most recent … complete cycle. Staff should then retrieve the BLS Industry Productivity and Costs Labor Productivity indexes for NAICS 48421 covering that same period of time… Using the indexes for the beginning and ending years of the two full business cycles, staff should calculate the full percentage change in the productivity index over the entire period. If the change in the productivity index reflects a net negative value …, the productivity offset factor for MAX 4 increases should be .95. If the change in the productivity index reflects a positive value…, the productivity offset factor for MAX 4 increases should be .85.

adjustments would be damaging to carriers' financial health in certain regions, and could redound to the detriment of consumers who require their services.

The revisions agreed upon by DRA and CMSA will resolve the current problems with the MAX 4 tariff. They are rationally designed to correct the problems with the present framework without making major changes to the entire MAX 4 tariff structure. These changes will not harm consumers, because only rate caps will be adjusted, without intruding upon the competitive marketplace. As we found long ago, the used household goods industry is fundamentally competitive. *Re Regulation of Used Household Goods Industry by Truck* (1990) 38 CPUC 2d 559, 586. It is characterized by relative ease of entry and high sensitivity to price competition, and carriers that consistently price their services higher than their competitors quickly become vulnerable to failure. Consequently, the Commission's larger task is to monitor companies' compliance with consumer protection rules to ensure that price-cutting does not negate pricing requirements and become destructive to consumers' interests.

As CMSA contends, adoption of the suggested changes would make MAX 4 more comprehensible to consumers and easier to use. However, we doubt that the vast majority of consumers ever try to use this intricate and complex document, so the inquiry does not end there. The more important question is whether consumer protection would be enhanced by reason of the simplified content, and we find that it would. Adoption of simplified terms in the tariff would make the price caps easier for Commission staff to administer and enforce. This would be true at every stage, from advising consumers to disciplining carriers for violations. By extension, tariff simplification would make it easier to develop tools for the consumer, such as website content enabling consumers to obtain and evaluate estimated moving costs online. In addition, adoption of the proposed changes would eliminate the current productivity offset factor anomalies, and better promote the efficiency and productivity of moving companies in the state without making any change to the existing incentive mechanism.

In recognition of the existence of universal support for the proposed changes, we will adopt the changes to MAX 4 that have been proposed jointly by CMSA and DRA, but implementation of the changes will be subject to the preparation and issuance of an appropriate resolution by CPSD.

5. Categorization and Need for Hearing

In Resolution ALJ 223 dated August 29, 2008, the Commission recategorized this application as quasi-legislative. A public hearing is not necessary, and it is not necessary to disturb the determination made by the Commission in Resolution ALJ 223.

6. Comments on Proposed Decision

The proposed decision of ALJ Ryerson in this matter was mailed to the parties in accordance with section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Joint comments were filed on January 8, 2010, by DRA and CMSA. The comments of these parties have been incorporated in the final decision.

7. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Victor D. Ryerson is the assigned ALJ in this proceeding.

Findings of Fact

1. Petitioner/applicant CMSA is a trade association of persons, firms, and corporations engaged in the transportation of used household goods in California i.e., household goods movers serving intrastate markets.

2. Intrastate household goods movers in California are subject to regulation by the Commission in accordance with MAX 4, which was initially adopted in I.89-11-003 and revised from time to time thereafter. MAX 4 is a comprehensive regulation that contains many consumer protection requirements, such as contract forms, notice requirements, and rules regarding billing, carriage and collection of charges, in addition to rate caps and floors.

3. In general terms there are two types of rates in MAX 4: hourly rates, which are rates charged by the hour that apply to moves of 100 or fewer constructive miles, and distance rates, which are based upon shipment weight and length of haul. Hourly rates apply to what are generally called "local" moves, and distance rates primarily apply to moves of more than 100 constructive miles, or on shorter moves where the use of distance rates result in lower charges than those under hourly rates.

4. MAX 4 defines three hourly-rate territories, which are identified as A, B and C. Territory A is the highest-rate territory, and C is the lowest. These territories were established on the basis of carrier costs at the county level. Under MAX 4 Items 210 and 230, Territory A comprises eight San Francisco Bay Area counties, plus Monterey County; Territory B comprises eight Southern California counties; and Territory C encompasses the remaining 41 counties.

5. There are two distance-rate regions under MAX 4 Items 220 and 240, which are defined as Regions 1 and 2. Region 1 is the coastal region from San Francisco Bay to Sacramento, thence south, including Fresno, Bakersfield, Los Angeles, the city of San Bernardino, and San Diego. Region 2 encompasses the remaining parts of the state, namely the area north of the Bay Area and Sacramento, the Sierra Nevada, and the southern desert areas.

6. Region 1 rates are slightly lower than Region 2 rates. The regions were established on the basis of carrier operating costs, additionally considering population, traffic patterns, and volume of moving activity. Higher volumes and load factors in the coastal area, especially between the San Francisco Bay Area and the Los Angeles metropolitan area, produced lower costs, and thus lower rates, in Region 1.

7. The maximum rate regions and territories were initially created in minimum-rate tariffs before the advent of MAX 4, and with the exception of moving Sonoma County into Territory A in 1983, the Commission has not redefined the geographical boundaries of these areas for 40 years.

8. Since 1996, section 5191 of the Public Utilities Code has required MAX 4 rate levels to be adjusted annually, using an indexing method that the Commission relied upon to establish the initial MAX 4 rates. Under Resolution TL-19093, the rates are adjusted for inflation by formula, but the increases are offset by a "reasonable percentage" to encourage higher productivity and promote efficiency and economy of operation by household goods carriers.

9. The results of C&O and F/B surveys conducted by CMSA in 2009 with the cooperation and concurrence of DRA demonstrate that material changes have occurred in the demographics of California and the productivity of the intrastate household goods moving industry. DRA and CMSA agree that these survey results provide sufficient information to draw general conclusions about the revisions to MAX 4 proposed in this proceeding, and are a reliable basis for making the findings in this proceeding.

10. Differences in average wage costs between and among current MAX 4 hourly rate territories correspond with the current maximum rates. In other words, average wages for Territory A are higher than those in Territory B, which

are higher than those in Territory C. The same is true for maximum rates. However, there are great variations in the ranges of wages paid within territories, and even within counties such as, for example, Santa Barbara and San Luis Obispo Counties, where movers' hourly rates are compressed against the Territory C MAX 4 limits.

11. Territory C carriers' freight bills demonstrate that carriers charging rates of 95 percent to 100 percent of the MAX 4 rates were from Santa Barbara, San Luis Obispo, and Stanislaus Counties. These results strongly indicate the existence of high labor rate pockets in otherwise low labor rate counties, and indicate a need to consider average labor costs in Territory C in combination with wage ranges and market pricing for this territory.

12. For the most part, carriers are generally charging rates appreciably below maximum rates, whether hourly or distance based. The exception is hourly rate Territory C, where carriers are charging at or near the territory's maximum rates to a much greater extent than carriers in the other two territories. Carriers in Territory C typically charge higher rates than carriers in Territory B. Equalizing the maximum rates in these two territories to eliminate this discrepancy would eliminate one set of rates altogether, and leave two hourly rate territories, A and B.

13. The Territory B maximum rates would provide an adequate ceiling for former Territory C carriers, and preserve the consumer protection concept envisioned by the Commission, as only maximum rates, and not market prices, would be affected.

14. The maximum rate differences between Territories A and B range from 4.75 percent for a vehicle plus driver (Van + 1) to 15.9 percent for a helper. For packers, who are a significant factor in many moves, the difference in rates is

13.4 percent. The typical comparison rate is that for a vehicle plus driver and helper (Van + 2); the difference in that rate between Territories A and B is 8.4 percent. The average observed difference between actual market prices for Van + 2 in the two territories is approximately 20 percent.

15. Most carriers charge well below maximum rates in both distance rate regions, although a greater proportion of moves were at or near maximum rates in Region 1 than in Region 2. Eliminating Region 1 would have no appreciable negative economic effect upon consumers.

16. The 1960s boundary line between Regions 1 and 2, which is still in use today, was driven by the demographics of a twelve-county region, reflecting then existing metropolitan areas. Those areas have evolved dramatically in the past 40 years, as urbanized development has expanded, and roads and highways have been altered to respond to the changes. The book of maps accompanying MAX 4 Distance Table 8 is consequently outdated in metropolitan zones.

17. The maximum fixed distance rates of Region 1 (Item 300) are in the range of 91 to 100 percent of those of Region 2 (Item 310).

18. Approximately 80 percent of moves conducted under MAX 4 are hourly rate moves.

19. Although some carriers are assessing charges at or near maximum distance rates, the overwhelming majority are pricing distance moves at discounts of 12 to 50 percent below MAX 4 maximum distance rates for either region.

20. The present formula for increasing maximum rates consists of two parts: First, the average annual change in the Consumer Price Index for All Urban Consumers (CPI-U) in the Los Angeles and San Francisco Bay metropolitan

areas; and second, a reasonable percentage reduction (productivity offset factor) to encourage productivity.

21. The productivity offset factor was derived from the average annual trucking productivity data for the period from 1970 through 1989, a period of net productivity gains, adjusted specifically for household goods transportation. The adopted factor is .669, which means that a given increase in CPI-U is reduced by that factor to yield the percentage increase in maximum rates for the year.

22. It has been more than 20 years since the current industry productivity element was calculated for use in indexing rate increases, and it has never been reviewed or updated. Recent data show that the current productivity offset factor is no longer accurate.

23. During the 1987 – 2007 period there was an overall decline in mover productivity, indicating that the MAX 4 productivity assumptions relied upon by the Commission have been exaggerated since 1998.

24. The revisions proposed by CMSA and DRA would correct the deficiencies in the present MAX 4 tariff. These revisions are rationally designed to correct the present framework without making major changes to the entire MAX 4 tariff structure.

25. Adoption of the suggested changes would make MAX 4 more comprehensible to consumers and easier to use.

26. Adoption of simplified distance and hourly rate terms in MAX 4 would make the price caps easier for Commission staff to administer and enforce.

27. Tariff simplification would make it easier to develop tools for the consumer, such as website content enabling consumers to obtain and evaluate estimated moving costs online.

28. Adoption of the proposed changes would eliminate anomalies in the current productivity offset factor, and better promote the efficiency and productivity of moving companies in the state without making any change to the existing incentive mechanism.

Conclusions of Law

1. The changes to MAX 4 proposed by CMSA and DRA will correct current deficiencies in that tariff, but will not harm consumers, because only rate caps will be adjusted. The competitive marketplace will not be materially affected by these changes.

2. The Commission should adopt the changes to MAX 4 that have been proposed jointly by CMSA and DRA, based upon Findings of Fact 7 through 28, and provide for implementation thereof by CPSD.

O R D E R

IT IS ORDERED that:

1. *Maximum Rate Tariff 4 Naming Maximum Rates and Rules for the Transportation of Used Property, Namely: Household Goods and Personal Effects over the Public Highways within the State of California by Household Goods Carrier,* effective July 23, 1998 (MAX 4), is revised as follows, effective upon issuance of an implementing resolution by the Commission, except as provided in subparagraph c:

   a. Hourly rate Territory C is eliminated, and Territory C counties are incorporated into current Territory B, by revising Items 210 and 230 in accordance with the terms of this order, and conforming other Items to these revisions.

   b. Distance rate Region 1 is eliminated, and Region 2 rates are applicable to the entire state, by revising Items 220, 240, 300, 310, 380, and 390 in accordance with this order, and conforming other Items to these revisions.

c. The productivity offset factor used in making annual rate adjustments is reset from .667 (the current factor) to .95 for five years, effective January 31, 2010.

d. Commencing with the tariff increase in January 2015, the productivity offset factor must be re-evaluated and reset every two years. If productivity change is positive, the productivity offset factor shall be set at .85; if productivity change is negative, it shall be set at .95.

2. The Commission's Consumer Protection and Safety Division shall, as soon as reasonably practicable, prepare the implementing resolution, and all necessary revised pages and maps incorporating the changes adopted in the preceding paragraph, for adoption by the Commission.

3. Application 08-03-005 is closed.

This order is effective today.

Dated January 21, 2010, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
Commissioners