

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Timothy J. Muris, Chairman
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary
Pamela Jones Harbour

_____)	
In the Matter of)	
)	
NEW HAMPSHIRE MOTOR)	Docket No. C-
TRANSPORT ASSOCIATION,)	
)	
an association.)	
_____)	

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of certain acts and practices of New Hampshire Motor Transport Association (“NHMTA”), hereinafter sometimes referred to as “Respondent,” and Respondent having been furnished thereafter with a copy of the draft of Complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of the Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent New Hampshire Motor Transport Association is a not-for-profit association, organized and existing under the laws of the State of New Hampshire with its principal office and place of business at 13 West Street, Concord, New Hampshire 03301.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED, that for the purposes of this Order, the following definitions shall apply:

- A. "Respondent" or "NHMTA" means New Hampshire Motor Transport Association, its officers, directors, executive board, committees, representatives, agents, employees, successors and assigns;
- B. "Carrier" means a common or contract carrier of property by motor vehicle within the State of New Hampshire subject to regulation as a “Household Goods Carrier” under NH RSA 375-A or any successor statute;
- C. "Intrastate transportation" means the pickup or receipt, transportation and delivery of property hauled between points within the State of New Hampshire for compensation by a carrier authorized by the New Hampshire Bureau of Common Carriers (“NHGCC”) to engage therein;
- D. "Member" means any carrier that pays dues or belongs to NHMTA or to any successor corporation;
- E. "Tariff" means the publication, including but not limited to those currently required by NH RSA 375-A, stating the rates of a carrier for the transportation of property between points within the State of New Hampshire, including updates, revisions, and/or

amendments, and any corresponding general rules and regulations;

- F. "Rate" means a charge, payment or price fixed according to a ratio, scale or standard for direct or indirect transportation service;
- G. "Person" means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.

II.

IT IS FURTHER ORDERED that Respondent shall forthwith cease and desist from entering into and within 120 days after service upon it of this Order cease and desist from maintaining, directly or indirectly, any contract, agreement, understanding, plan, program, or combination, by or among carriers, to fix, stabilize, raise, maintain or otherwise set the rates charged by two or more carriers in connection with the intrastate transportation of property or related services, goods or equipment, including but not limited to:

1. Preparing, developing, disseminating or filing a proposed or existing tariff containing rules instituting automatic changes to rates charged by two or more carriers;
2. Inviting, coordinating or providing a forum for any discussion or agreement between or among competing carriers concerning automatic rate changes for the intrastate transportation of property or related services, goods or equipment;
3. Providing information to any carrier about rate changes considered or made by any other carrier prior to the time at which such rate change becomes a matter of public record with the NHBCC;
4. Suggesting, urging, encouraging, persuading or in any way influencing members to charge, file or adhere to any existing or proposed tariff provision which affects rates, including automatic rate adjustments, or otherwise to charge or refrain from charging any particular price for any services rendered or goods or equipment provided; and
5. Maintaining any rate or tariff committee or other entity to consider, pass upon, compile, monitor, assist in the circulation of, or discuss rules pertaining to automatic rate adjustments with respect to carriers.

III.

IT IS FURTHER ORDERED that Respondent shall, within 120 days after service upon it of this Order:

1. Cancel all tariff provisions on file with the NHBCC that institute automatic changes to rates charged by two or more carriers and take such action as may be necessary to effectuate cancellation and withdrawal of such provisions;
2. Terminate any previously-executed powers of attorney and rate and tariff service agreements, between NHMTA and any carrier utilizing its services, authorizing the publication and/or filing of tariffs containing rules regarding automatic rate increases within the State of New Hampshire;
3. Cancel any provisions of NHMTA's articles of incorporation, by-laws and procedures and any other rules, opinions, resolutions, contracts or statements of policy that have the purpose or effect of permitting, announcing, stating, explaining or agreeing to any business practice enjoined by the terms of this Order; and
4. Amend NHMTA's by-laws to require members engaged in the transportation of household goods to observe the provisions of the Order as a condition of membership in NHMTA.

IV.

IT IS FURTHER ORDERED that, within fifteen (15) days after service upon it of this Order, Respondent shall mail or deliver a copy of this Order, under cover of the letter attached hereto as "Appendix," to each member of Respondent that currently files its tariff through NHMTA, and for a period of three (3) years from the date of service of this Order, to each new member engaged in the transportation of household goods within ten (10) days of such member's acceptance by Respondent.

V.

IT IS FURTHER ORDERED that Respondent notify the Commission at least thirty (30) days prior to any proposed change in Respondent, such as dissolution, assignment or sale resulting in the emergence of a successor entity, or any other proposed change in the structure or ownership of the Respondent, which may affect compliance obligations arising out of the Order.

VI.

IT IS FURTHER ORDERED that Respondent shall file a written report within six (6) months of the date of service of this Order, and annually on the anniversary date of the original report for each of the five (5) years thereafter, and at such other times as the Commission may require by written notice to Respondent, setting forth in detail the manner and form in which Respondent has complied with this Order.

VII.

IT IS FURTHER ORDERED that this Order shall terminate twenty (20) years from the date on which this Order was issued by the Commission.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED:

APPENDIX

(Letterhead of the New Hampshire Motor Transport Association)

Dear Tariff Member:

The Federal Trade Commission has ordered the New Hampshire Motor Transport Association (NHMTA) to cease and desist from assisting with the filing of tariffs that contain rules calling for automatic rate increases and, in particular, the “seasonal adjustment” provision of Rule 28 of the existing tariff. A copy of the Commission’s Decision and Order is enclosed.

The terms of the Order itself are controlling, but its essential provisions are as follows:

(1) NHMTA is prohibited from filing any tariffs that have rules that call for tariff members to automatically increase their rates. Each member carrier must independently set its own rates for transportation of property or related services, goods or equipment between points within the State of New Hampshire. Tariff members may still use NHMTA as a tariff publishing agent provided that the tariff does not contain any rules calling for automatic rate increases such as the “seasonal adjustment” rule.

(2) NHMTA is prohibited from providing a forum for its tariff members for the purpose of discussing rules concerning automatic rate increases.

(3) NHMTA is prohibited from urging, suggesting, encouraging or attempting to influence in any way the rates members charge for their intrastate transportation services, including influencing members to make automatic rate adjustments. NHMTA may not provide non-public information to any carrier about rate changes ordered by another carrier.

(4) NHMTA is prohibited from maintaining any rate or tariff committee which discusses or formulates rules pertaining to automatic rate increases.

(5) NHMTA has 120 days to make sure that all tariffs and tariff supplements on file at the New Hampshire Bureau of Common Carriers which were filed by the NHMTA contain no rules calling for automatic rate increases and, in particular, the “seasonal adjustment” rule.

(6) NHMTA is required to amend its by-laws to require its tariff members to observe the provisions of the Order as a condition of membership in NHMTA.

Sincerely yours,

[appropriate NHMTA officer]

Enclosure