



UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)
)
)
)
KENTUCKY HOUSEHOLD)
GOODS CARRIERS)
ASSOCIATION, INC.,)
)
a corporation.)
)

Docket No. 9309

DECLARATION OF JAMES C. McMAHON

1. The undersigned has personal knowledge of the facts set forth in this Declaration, and if called as a witness, I could and would testify competently under oath to such facts.
2. I am the attorney for the Respondent in this proceeding.
3. Attached to this Declaration are the Exhibits submitted in support of Respondent's Motion for Summary Decision filed simultaneously herewith.
4. Exhibit 1 is a true and correct copy of excerpts of the Transcript of the Deposition of A.F. Mirus taken on November 18, 2003 and November 19, 2003.
5. Exhibit 2 is a true and correct copy of excerpts of the Transcript of the Deposition of Hon. Denise King taken on November 12, 2003.
6. Exhibit 3 is a true and correct copy of the Transcript of the Deposition of William C. Debord taken on November 13, 2003 and November 14, 2003.

7. Exhibits 4A through 4-Z-1 are copies of Kentucky Statutes and Regulations referenced in the Deposition of William C. Debord and more particularly described in Respondent's Rule 3.24 Statement.

8. Exhibit 5 is a true and correct copy of a Decision of the U.S. Surface Transportation Board (STB Ex Parte No. 555; Household Goods Tariffs; dated February 4, 1997) found at www.stb.dot.gov/decisions.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, NY
December 19, 2003


James C. McMahon
Attorney for Respondent
Kentucky Household Goods
Carriers Association, Inc.
60 East 42nd Street; Ste. 1544
New York, NY 10165-1544
212.973.4862

CERTIFICATE OF SERVICE

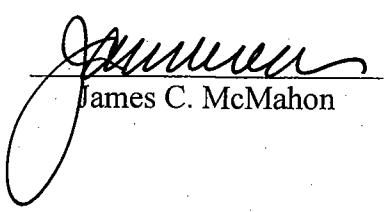
This is to certify that on December 19, 2003, I caused a copy of the attached **Declaration of James C. McMahon** to be served upon the following persons by hand delivery:

Hon. D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Hon. Richard Dagen
Associate Director
Federal Trade Commission
601 New Jersey Ave., N.W.
Room 6223
Washington, DC 20580

Dana Abrahamsen, Esq.
Bureau of Competition
Room 5229
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, D.C. 20580

Dated: New York, NY
December 19, 2003


James C. McMahon

[1] A: All right.
[2] Q: Are you comfortable with that?
[3] A: Very good.
[4] Q: And how did you first become aware of the
[5] Kentucky Association?
[6] A: I was a member of the board, board of
[7] directors.
[8] Q: And when was that?
[9] A: Let's see if I can give you a time. From about
[10] 1965 all the way up to 1985.
[11] Q: And what were your responsibilities on the
[12] board of directors?
[13] A: Several. I started out as a member of the
[14] board of directors, and then they gave me the job of
[15] secretary. I held that for two years, treasurer for
[16] two years and then went from treasurer to the president
[17] for two years.
[18] Q: And these were in the 1965 to 1985 time
[19] period?
[20] A: Yes. From — yes, that is correct. That is
[21] right.
[22] Q: And are you still associated with that
[23] association?
[24] A: Yes, I am. I'm executive consultant for them.
[25] Q: And just — I'm just afraid the record is not

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[1] do you work on?
[2] A: Say again, please.
[3] Q: What kind of things do you do?
[4] A: Well, help them in arranging to get out dues —
[5] newsletters, planning conferences, planning
[6] conventions, and any other administrative duties they
[7] might assign to me.
[8] Q: Are you involved with the tariff?
[9] A: Yes, I am.
[10] Q: What's your involvement with the tariff?
[11] A: Chairman of the tariff committee.
[12] Q: And can you describe just generally for the
[13] record what the tariff committee is?
[14] A: In general. The short version.
[15] Q: Short or long, as much as you want, just for
[16] the record so we have a record of it.
[17] A: Yeah. Well, after being appointed as chairman
[18] of the tariff committee, then the board of directors
[19] selects three members of the association to work with
[20] me.
[21] Q: So the committee is made up of four people, you
[22] and three other members?
[23] A: Correct. That's right.
[24] Q: And what does the tariff committee do?
[25] A: We keep track of the various tariffs, the

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[1] going to be clear.
[2] A: All right.
[3] Q: What transpired in — in what way did your
[4] affiliation with the Kentucky Association change in
[5] 1985?
[6] A: I went from the board of directors to an
[7] office, to the secretary, becoming an executive officer
[8] you might say. I continued on the board, but then I
[9] was a secretary of course.
[10] Q: And are you still on the board?
[11] A: No, no. No, I'm not on the board.
[12] Q: When did you cease being on the board?
[13] A: I got off the board in '86.
[14] Q: And when did you start becoming an executive
[15] consultant?
[16] A: In — the same date in 1986.
[17] Q: And you continue in that position till today?
[18] A: Yes.
[19] Q: And what are your duties as executive
[20] consultant?
[21] A: My duties outline — I do a — I'm sort of an
[22] administrative assistant to the president of the
[23] association as well as to the director of the
[24] association.
[25] Q: And what are your duties? What kind of things

[1] tariffs that govern the household goods industry, and
[2] maintain the tariff for the Kentucky Household Goods
[3] Carriers Association, the intrastate tariff.
[4] Q: And what are some of the functions that go into
[5] maintaining that tariff?
[6] A: Let's start off with the — if we're going to
[7] publish a supplement to the tariff, we will put out a
[8] bulletin. We publish a tariff bulletin giving the
[9] membership a notice, anywhere from 30 to 60 days'
[10] notice that we're going to publish a supplement and
[11] afford them an opportunity to submit any request for
[12] changes they wish or adjustments they wish.
[13] Q: Okay. Then what?
[14] A: After we receive their information, their
[15] adjustments or exemptions to items, after we receive
[16] that, we prepare a docket. And the docket contains the
[17] requested changes from individual carriers or any other
[18] changes recommended by the board of directors or
[19] members of the association.
[20] Q: And is that sent out to the members?
[21] A: That's sent out to all parties to the tariff,
[22] all members or all parties to the tariff, however you
[23] wish to word that. That docket is mailed out.
[24] And in that docket there's a wording and it
[25] gives them ten days. Each person has a ten-day period

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- [1] to come back and say they agree, disagree or they wish
[2] to make a change.
[3] In other words, they can submit any request
[4] they wish to submit at that time to be included in the
[5] supplement.
[6] Q: And if they don't get back to you within those
[7] ten days, is there another step?
[8] A: They — not for them, not another opportunity
[9] for them to make any changes, no. No.
[10] Q: Is there another step —
[11] A: There's another step, yes. That is when I put
[12] together all this material for the supplement and
[13] prepare it to go to the computer.
[14] Q: And then that — and once it's done being put
[15] together on the computer —
[16] A: And then we have a filing date. It has to be
[17] presented to the Kentucky Transportation Cabinet on the
[18] 30-day notice.
[19] In other words, if it's going to be effective
[20] on the 1st day of April, it must be submitted on the
[21] 1st day of March to the Kentucky Transportation
[22] Cabinet. They have a 30-day period in which to review,
[23] approve, disapprove any — all of it or any portion of
[24] it.
[25] Q: Now, before I leave this topic, let me go back

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- [1] and make sure we have on the record a clear description
[2] of the Kentucky Association. We've talked about the
[3] tariff, some of the steps in the tariff.
[4] A: Right.
[5] Q: And you mentioned that there's conferences,
[6] conventions and a newsletter.
[7] But what other — I just want to make sure we
[8] have on the record your description of the association
[9] and all that it does.
[10] A: Well, our main purpose I feel is to keep the
[11] members of the association apprised of what's going on
[12] in the industry on the national level as well as
[13] possible and on the intra and the state level.
[14] If there's any changes coming out in the state,
[15] we will pick it up and advise them what's taking place
[16] such that it may refer to the licensing. It could
[17] refer to taxing, taxes or this matter.
[18] If we receive any information from the —
[19] regarding interstate traffic, then we will pass that on
[20] to them if it pertains to them.
[21] But it's a matter of keeping them abreast of
[22] what's going on because these are small mom-and-pop
[23] operations some of them and they do not have the —
[24] they do not have the contacts or the resources we have,
[25] so it's our mission, is to keep them informed as to

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- [1] what's going on.
[2] Q: How many people work for the
[3] Kentucky Association?
[4] A: Actually work for the — under contract?
[5] Q: Yeah. Employees.
[6] A: Only be two. You have a president, but he's
[7] elected, and then you have a director and myself.
[8] Q: And who is the director?
[9] A: The director is William Lally,
[10] William I. Lally.
[11] Q: And is that a full-time position or —
[12] A: Yes, he is. Yes. His position and my position
[13] are full-time.
[14] Q: And how many members are there?
[15] A: At the present time there's 93. That
[16] fluctuates.
[17] Q: And when we use the term "member," what
[18] constitutes a member?
[19] A: Someone who wishes to go into the moving
[20] industry, they will apply to the state for an
[21] application — for a certificate — excuse me — for a
[22] certificate outlining what they wish to do, and the
[23] state must approve or disapprove that certificate.
[24] Once they receive the certificate, then the
[25] instruction they receive from the state is they must

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- [1] file a tariff. They must have certain phases of
[2] insurance, which we do not get into, but they must
[3] become — once they become a member of our
[4] association — that's a volunteer — they can
[5] volunteer to become a member and they must have a
[6] tariff on file.
[7] Now, if they elect to file their own tariff,
[8] they may do so.
[9] Q: Even though they're a member of your
[10] association?
[11] A: That's correct. They can still file an
[12] individual tariff if they wish.
[13] Q: How many of the 93 members are a member of the
[14] Kentucky Association tariff?
[15] A: Well, 93 members, but those are members, 93 is
[16] our membership. But there are other carriers in
[17] Kentucky who have been given — I'm probably going to
[18] get this confused. There are other carriers in
[19] Kentucky who have been granted certificates, but they
[20] are outside of our tariff. They have filed their own
[21] tariff.
[22] Q: Let me ask one question and make sure — see if
[23] we can get the record real clear on this.
[24] A: All right.
[25] Q: So the 93 members of the Kentucky Association,

[1] argued later. If it's recorded as hearsay here, then
[2] certainly before it's admitted into evidence—if we
[3] were to try to admit the transcript into evidence,
[4] then, there'd be an opportunity then to revisit that.

[5] MR. McMAHON: Well, but there are no stipulations
[6] that you feel you need or you want?

[7] MR. ABRAHAMSEN: No.

[8] MR. McMAHON: Okay. Then shall we begin?

[9] Mr. ABRAHAMSEN: By all means.

[11] Whereupon —
[12] HON. DENISE KING

[13] a witness, called for examination, having been first
[14] duly sworn, was examined and testified as follows:

[15] DIRECT EXAMINATION

[16] BY MR. McMAHON:

[17] Q: Ms. Denise King.

[18] A: Yes.

[19] Q: Which title of courtesy do you prefer?

[20] A: Denise.

[21] Q: You prefer Denise?

[22] A: Yes, sir.

[23] Q: How about—and what is your job title?

[24] A: I'm Director of the Division of Motor

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[1] Carriers.

[2] Q: Okay. And—

[3] MR. McMAHON: Has the witness been sworn in?

[4] A: Yes.

[5] Q: Okay. And, how long have you been Director
[6] of the Division of Motor Carriers?

[7] A: I have been Director since May 1st, 2003. I
[8] was acting director for a six week period March 16th
[9] up till May 1st.

[10] Q: All right. My name is James—just by way of
[11] introduction, my name is James McMahon, I'm an
[12] attorney, I'm from a place that's not near here, it's
[13] called New York City and it's identified by county
[14] code 000 downstairs where you sign in and I represent
[15] the Kentucky Household Goods Carriers Association and
[16] I'm going to ask you some questions here, which is
[17] necessary for the defense of the Kentucky Household
[18] Goods Carriers Association in this proceeding. If
[19] there's anything I say or any question that I ask you
[20] that you can't hear or don't understand, please
[21] interrupt me, I'll be glad to do it again. If you
[22] feel you want to be excused to take a break or leave
[23] the room, please just tell me and that will be fine.
[24] And, I would just ask that you wait until a question

[1] is finished before answering the question so it can be
[2] properly recorded in the transcript, is that okay?

[3] A: That's fine.

[4] Q: To your knowledge, does the Kentucky

[5] Transportation Cabinet—withdraw that. Who is your
[6] employer?

[7] A: My employer is Kentucky Transportation
[8] Cabinet.

[9] Q: To your knowledge, does the Kentucky
[10] Transportation Cabinet regulate the filing of tariffs
[11] by household goods carriers covering intrastate
[12] transportation rates?

[13] A: I guess, yes. I guess I was questioning the
[14] word regulate, because—

[15] Q: Okay.

[16] A: —I don't understand a whole lot of the
[17] tariff procedure.

[18] Q: Are you—

[19] A: —I know something about it.

[20] Q: To your knowledge, does the—do the laws of
[21] Kentucky and the regulations of the Kentucky
[22] Transportation Cabinet require that household goods
[23] carriers must file schedules showing their rates,
[24] charges and services?

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[1] A: Yes, sir.

[2] Q: And, is it your understanding that such a
[3] document referred to as a schedule of rates, charges
[4] and services is customarily referred to as a tariff?

[5] A: Yes, sir.

[6] Q: And, is it your understanding that household
[7] goods carriers are required to file tariffs with the
[8] Kentucky Transportation Cabinet?

[9] A: Yes, sir.

[10] Q: And, is it your understanding that the
[11] Kentucky Transportation Cabinet has a program in place
[12] for taking certain actions with regard to tariff
[13] filings?

[14] A: Yes.

[15] Q: Okay. And—

[16] MR. McMAHON: Let the record reflect that Mr.
[17] Dennis Tolson, the President of the respondent has
[18] just entered the room.

[19] Q: Can you tell me who is responsible for the
[20] program of activity that's involved on the part of the
[21] Kentucky Transportation Cabinet with respect to
[22] household goods tariffs?

[23] A: Yes. Bill Debord.

[24] Q: And, that's William Debord?

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[1] A: Yes.
[2] Q: And, what is his job title at this time?
[3] A: I'm not sure what his title is at this time.
[4] He is a part-time employee for us.
[5] Q: What are his responsibilities? Can you describe them for me?
[6] A: Okay. He is responsible for working with the household goods tariffs. He audits those companies for compliance with their tariff. He also works with passenger carriers.
[7] Q: With, I'm sorry?
[8] A: Passenger carriers.
[9] Q: And, does Mr. Debord report to you in his position?
[10] A: Yes.
[11] Q: And, to whom do you report?
[12] A: I report to the Commissioner of the Department of Vehicle Regulations.
[13] Q: And, who is that at this time?
[14] A: William M. Bushart.
[15] Q: And, to whom does Mr. Bushart report?
[16] A: He reports to Cliff Linkes, Clifford Linkes, who is Deputy Secretary of Transportation.
[17] Q: Okay. And, to whom does Mr. Linkes report?

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[1] who's defending the action, the respondent, the Kentucky Household Goods Carrier's Association is the respondent, and your name is on the respondent's witness list as somebody who they might call at trial. So, we want to find out what you knew about the matters at hand here. And, I would just say the same thing that Mr. McMahon said, that if you want to take a break or you don't understand the question, just let us know and we'll rephrase the question, take a break, whatever you want to do.

[1] A: Okay.
[2] Q: And, you've been very good about not starting your answer until the question is finished and that saves wear and tear on the pen of the person trying to take down all of our words. So, I will ask my questions. And, as I said, if you want to get to a point where you want to take a break, that would be fine. Why don't you state for the record your education?

[3] A: High school, some college.
[4] Q: Okay. And, what's your work history starting at, you know, the beginning?
[5] A: I have worked in the Division of Motor Carriers since 1979. Prior to that I worked in other

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[1] clerical jobs. I started in the Division as Secretary to the Director. And, I've worked my way up through the ranks, so to speak.

[2] Q: And, the Division of Motor Carriers—I think you answered this already, but I didn't get it in my notes. The Division of Motor Carriers is part of the Transportation Cabinet?

[3] A: Yes, sir.
[4] Q: And, is there another operational division between the Cabinet and the Division of Motor Carriers?
[5] A: Yes, sir.
[6] Q: And, what's the name of that?
[7] A: Department of Vehicle Regulation.
[8] Q: And, what are your duties—could you describe your duties generally? We've got some specifics that you do some—you oversee Mr. Debord's activities with respect to the tariffs. But, what are your other duties?

[9] A: I have a staff of fifty-seven employees, not all of those are currently filled, there are some vacancies. We deal with anything having to do with a motor carrier of freight or passengers, except for CDL licenses. We do not issue anything having to do with

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In The Matter Of:

KENTUCKY HOUSEHOLD GOODS CARRIERS ASSOC., INC
MATTER NO. D09309

WILLIAM DEBORD

Vol. 1, November 13, 2003

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Word Index included with this Min-U-Script®

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FEDERAL TRADE COMMISSION

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FEDERAL TRADE COMMISSION

IN THE MATTER OF:)
KENTUCKY HOUSEHOLD GOODS,) File No. 9309
a Corporation)

Thursday, November 13, 2003

Room

Kentucky Transportation Cabinet

501 High Street, 10th Floor

Frankfort, Kentucky

The above named matter came on for
Investigational hearing, pursuant to notice, at

10:00 A. M.

APPEARANCES:

ON BEHALF OF THE FEDERAL TRADE COMMISSION:

Hon. Dana Abrahamson
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(202) 328-2024

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ON BEHALF OF KENTUCKY TRANSPORTATION CABINET:

Hon. J. Todd Shipp
Office of General Counsel
State Office Building
Frankfort, Kentucky 40601

- [1] Whereupon —
[2] **MR. BILL DEBORD**
[3] a witness, called for examination, having been first
[4] duly sworn, was examined and testified as follows:
[5] **DIRECT EXAMINATION**
[6] **BY MR. McMAHON:**
[7] Q: Mr. Debord, good morning.
[8] A: Good morning.
[9] Q: My name is James McMahon, I'm an attorney and
[10] I represent the Kentucky Household Goods Carriers
[11] Association, the respondent in this proceeding. Were
[12] you here for the testimony of Director Denise King
[13] yesterday?
[14] A: Most of it. Yes, sir.
[15] Q: And, did you hear counsel for the
[16] Commission's comments about the proceeding when the
[17] deposition was opened?
[18] A: No. I missed that part.
[19] **MR. McMAHON:** Do you want to make the—is that
[20] appropriate to ask you to—
[21] **MR. ABRAHAMSEN:** Sure. The purpose of this
[22] deposition today is to take the testimony of Mr.
[23] Debord. The testimony will be taken in the matter of

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- [1] Kentucky Household Goods Carriers Association, Inc.,
[2] Docket No. 9309.
[3] Q: Now, in this proceeding, it's necessary for
[4] the Kentucky Association, and I'm going to just refer
[5] to the Kentucky Household Goods Carriers Association
[6] as the Kentucky Association or the Association during
[7] the deposition. It is necessary for the Kentucky
[8] Association to demonstrate that the Kentucky
[9] Transportation Cabinet has actively supervised its
[10] tariff filing activities and that the Kentucky
[11] Transportation Cabinet has basically performed its
[12] regulatory responsibilities under the applicable laws
[13] and regulations. As a result I'll be asking you
[14] questions which are designed to establish that defense
[15] in this proceeding. And, there will be—because the
[16] Commission has taken the position that the Kentucky
[17] Transportation Cabinet has not actively supervised
[18] these functions, it will be necessary for me to go
[19] into great detail for which I apologize. It will be
[20] necessary for me to go into great detail and examine
[21] you on a substantial number of documents covering a
[22] substantial period of time on functions of the
[23] Kentucky Transportation Cabinet. So, I just wanted to
[24] alert you to that.

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- [1] If, during the course of my questioning of you, I
[2] ask you a question that you don't understand, please
[3] interrupt me at any time. If you need a break for any
[4] reason, please tell me, we'll take a break. If you
[5] want to confer with counsel for the Cabinet at any
[6] time, that's acceptable to me, I don't know whether
[7] it's acceptable to counsel for the Commission, but
[8] it's fine with me.
[9] And, I just want to ask you a couple of other
[10] questions. Are you taking any medication or are you
[11] suffering from any medical condition which would make
[12] it difficult for you to understand any of these
[13] proceedings or any of the questions that I might ask
[14] you today?
[15] A: I should not be, no.
[16] Q: Okay.
[17] **MR. ABRAHAMSEN:** If I could interject an
[18] objection to your introduction. I believe you stated
[19] that the Commission has taken the position that the
[20] defense has not met. And, I don't believe the
[21] Commission has taken that position. But, certainly
[22] complaint counsel is of that position. But, the
[23] Commission has issued a complaint, but has not taken a
[24] position on the defense, as far as I know.

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- [1] **MR. McMAHON:** Okay. Well, the Commission has
[2] issued a complaint.
[3] **MR. ABRAHAMSEN:** Okay.
[4] **MR. McMAHON:** Okay. I'm not going to—I don't
[5] think we have to argue about it. But, thank you for
[6] your—thank you for correcting me.
[7] Q: Could you state your name for the record and
[8] could you spell your last name, which I have seen
[9] spelled many different ways, please?
[10] A: That's no problem. William C. Debord,
[11] D-E-B-O-R-D.
[12] Q: And, Mr. Debord, are you presently employed?
[13] A: Yes, I am.
[14] Q: In what capacity and by whom?
[15] A: I am employed at the Kentucky Transportation
[16] Cabinet, Division of Motor Carriers.
[17] Q: And, what is your position?
[18] A: Administrative Specialist.
[19] Q: And, how—
[20] A: —3, I believe it is.
[21] Q: Administrative Specialist 3. And, how long
[22] have you held that position?
[23] A: Since March of 2000.
[24] Q: And, were you employed before that time?

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[1] A: Yes, sir.
 [2] Q: Let me ask you, as Administrative Specialist
 [3] 3, can you describe for me what your responsibilities
 [4] are with the Cabinet?
 [5] A: Well, that position is a part-time position.
 [6] That's just a restriction of no more than 100 hours
 [7] per month. My primary duties are to oversee the
 [8] intrastate regulation of carriers for hire, that
 [9] includes various passenger type carriers as well as
 [10] household goods transporters.
 [11] Q: Household goods carriers?
 [12] A: Yes, sir.
 [13] Q: In the course of your employment, are you
 [14] familiar with the Kentucky Association?
 [15] A: Yes.
 [16] Q: Prior to your current employment as
 [17] Administrative Specialist 3, what was your employment,
 [18] if any?
 [19] A: I was employed with the Division of Motor
 [20] Carriers.
 [21] Q: In what capacity?
 [22] A: At the time of my retirement in October of
 [23] 1999, I was Assistant Director.
 [24] Q: Assistant Director of the Division of Motor

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[1] Carriers?
 [2] A: Division of Motor Carriers. Yes, sir.
 [3] Q: And, how long have you held that position?
 [4] A: All during—after December, 1979, I served in
 [5] management roll of either Assistant Director, Acting
 [6] Director or Director. Most of that time period,
 [7] fifteen years or so, was either Acting Director or
 [8] Director.
 [9] Q: And, between 1979 and 1999, did you have any
 [10] responsibilities with regard to the regulation of
 [11] household goods carriers—
 [12] A: Yes.
 [13] Q: —in Kentucky?
 [14] A: Yes.
 [15] Q: And, what were those responsibilities?
 [16] A: Similar to what they are now. Oversee the
 [17] tariff filings, I audit carriers, responded to
 [18] complaints, telephone inquiries from the public,
 [19] basically administered the statutes contained in
 [20] Chapter 281.
 [21] Q: And, prior to 1979, were you employed?
 [22] A: Yes, sir.
 [23] Q: And, what was your employment prior to 1979?
 [24] A: Division of Motor Carriers, August of 1972 I

Page 13

[1] was employed with what is now Division of Motor
 [2] Carriers, but at that time it was referred to as the
 [3] Division of Rates and Services.
 [4] Q: Was that part of the Kentucky Transportation
 [5] Cabinet?
 [6] A: At that time it was referred to as the
 [7] Department of Motor Transportation.
 [8] Q: And, how long were you employed there?
 [9] A: Well, again, the same employer's been all the
 [10] way through, it's just the names have changed. I've
 [11] been employed with the Division or its other names
 [12] since that time, August of 1972.
 [13] Q: And, from 1972 to 1979, did you have any
 [14] responsibilities with regard to the—with regard to
 [15] household goods carriers?
 [16] A: Yes.
 [17] Q: And, what were those responsibilities?
 [18] A: Similar to what I have already answered.
 [19] Oversee the—management of the functions and also
 [20] personally—my responsibilities lingered with me as I
 [21] did management as well as routine tariff
 [22] investigations, complaint investigations.
 [23] Q: And, prior to 1972, what was your employment,
 [24] if any?

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[1] A: Farmer and student.
 [2] Q: Okay. Would it be fair to say that from 1972
 [3] until the present day, with the exception of a period
 [4] of approximately six months, you've been continuously
 [5] involved and employed by the Commonwealth of Kentucky
 [6] in administering its statutory program for the
 [7] regulation of household goods carriers?
 [8] A: That's correct.
 [9] Q: Are you familiar with the laws of the
 [10] Commonwealth of Kentucky which regulate motor
 [11] carriers?
 [12] A: Yes, sir.
 [13] Q: Are you familiar with the laws of the
 [14] Commonwealth of Kentucky which regulate household good
 [15] carriers?
 [16] A: Yes, sir.
 [17] Q: And, has it been part of your—the
 [18] responsibilities of your employment since 1972 to be
 [19] familiar with the laws of the Commonwealth of Kentucky
 [20] which regulate motor carriers and household goods
 [21] carriers?
 [22] A: Yes, sir.
 [23] Q: I need to go through each of these laws and
 [24] ask you questions about them. Okay.

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[1] MR. McMAHON: Can we go off for a second?
 [2] OFF THE RECORD
 [3] KTC EXHIBIT NO. 3 MARKED
 [4] Q: Mr. Debord, I show you what has been marked
 [5] as Exhibit KTC 3 and ask you if you are familiar with
 [6] that?
 [7] A: Yes.
 [8] Q: That's a provision of the Kentucky
 [9] Constitution, is it not?
 [10] A: That's correct.
 [11] Q: And, is that part of the program of
 [12] regulation of motor carriers that exists here in the
 [13] Commonwealth of Kentucky?
 [14] A: That is correct.
 [15] Q: And, can you basically tell us what that says
 [16] or what your understanding of it is?
 [17] A: Well, that is a constitutional provision in
 [18] Kentucky's constitution that basically regulates the
 [19] freight and passenger by railroad and common carrier,
 [20] that it is to be done so by general statutes and
 [21] regulations and that it—one of its purposes, most
 [22] certainly, is to prevent unjust discrimination, both
 [23] probably in rates and services. And, that latter part
 [24] there deals with liabilities—prohibition against

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[1] liability limitations.
 [2] Q: Is it your—and is it your understanding that
 [3] the Kentucky Transportation Cabinet enforces that
 [4] provision of the Constitution?
 [5] A: I would hope so, yes.
 [6] KTC EXHIBIT NO. 4 MARKED
 [7] Q: I'll show you what has been marked as Exhibit
 [8] 4. And, I apologize because this is a little marked
 [9] up. I'll show you what has been marked as Exhibit 4.
 [10] And, I ask if you've seen that before?
 [11] A: Yes. May I ask a question?
 [12] Q: Please.
 [13] A: What format was—were these printed from?
 [14] Q: There were printed—
 [15] A: The format is different than what I've known.
 [16] Q: These were printed from the Kentucky
 [17] Legislature home page off the website of the Kentucky
 [18] Legislature.
 [19] A: I have not read this particular section of
 [20] the Constitution.
 [21] Q: The section of the Constitution that I've
 [22] shown to you, Section 201, contains provisions which,
 [23] among other things, prohibit common carriers from
 [24] sharing revenues with each other. Is that a legal

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[1] provision that you are familiar with?
 [2] A: I was not aware of this particular section of
 [3] the Constitution.
 [4] Q: Is it your understanding that in the
 [5] Commonwealth of Kentucky household goods carriers who
 [6] have separate certificates would be permitted to share
 [7] revenues with each other?
 [8] A: I'm not following your question.
 [9] Q: Okay. I want to leave it alone for now.
 [10] MR. ABRAHAMSEN: Could I ask for clarification?
 [11] The original document that's been marked as Exhibit
 [12] KTC 4 contains some handwritten underlining and a
 [13] large X, would you care to—
 [14] MR. McMAHON: It does. It—and I apologize for
 [15] that. It contains those, because they assisted in
 [16] helping me read them. And, the reason why they're
 [17] there is because the X—the language which has been
 [18] excised, removes language which relates to telephone
 [19] companies, which is also included in the statute.
 [20] But, what the statutes says is, it imposes
 [21] restrictions with regard to a number of types of
 [22] firms, which include railroads, telegraphs, telephone,
 [23] bridge and common carrier companies. Now, as far as
 [24] the laws of Kentucky are concerned, household goods

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[1] carriers are common carrier companies.
 [2] MR. ABRAHAMSEN: Well, just for the record, is
 [3] this your handwriting?
 [4] MR. McMAHON: It's my handwriting.
 [5] MR. ABRAHAMSEN: And, is the section that has the
 [6] X through it, to your knowledge, is that still in the
 [7] Constitution?
 [8] MR. McMAHON: It is, according to the Kentucky
 [9] Legislature's website, but it's a proviso that relates
 [10] solely to telephone companies, whereas the language
 [11] before the proviso relates to common carrier
 [12] companies.
 [13] Can we go off for a second?
 [14] OFF THE RECORD
 [15] KTC EXHIBIT NO. 5 MARKED
 [16] Q: I show you what has been marked as Exhibit
 [17] KTC 5, which is also known as KRS 281.010 and ask if
 [18] you've seen that before?
 [19] A: Yes, I have.
 [20] Q: And, is that section of the law that you work
 [21] with in connection with your responsibilities
 [22] representing household goods carriers?
 [23] A: Yes, it is.
 [24] KTC EXHIBIT NO. 6 MARKED

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[1] it's went as far as a hearing and order of the
 [2] Commissioner making that judgment. But, we have
 [3] administratively, you know, made those judgments and
 [4] revoked rates. And, they were voluntarily changed to
 [5] meet our request.

[6] Q: Can you describe how that process would work?
 [7] A: Okay. Let me give you an example of one
 [8] that—since I'm speaking from memory, bear with me,
 [9] because I might be getting the specifics altered.
 [10] But, we had a tariff filed by the Association that had
 [11] individual application to a carrier. And, as I
 [12] referred earlier, we had voiced our concern in the
 [13] process to where—how the rates were come about
 [14] through the Association regarding a carrier that
 [15] wanted to have a flat rate in effect. Later informed
 [16] that that would be at the option of the shipper. For
 [17] example, if they wanted to move just a few pieces,
 [18] they could elect to use this type of rating system or
 [19] it was at their option, a larger move, they could use
 [20] another rate schedule. And, the carrier made a
 [21] request of the Association to file that rate. I
 [22] questioned that rate. We discussed it with the
 [23] particular carrier. At that stage, they still wished
 [24] to file that provision. We subsequently suspended it

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[1] and set the matter for hearing. And, during that
 [2] period of time they withdrew it. On another occasion,
 [3] we got on similar cases that an independent action.
 [4] The carrier convinced me through some changes and
 [5] verbiage that they did provide later, the verbiage
 [6] clarified some of the problems we had, and we allowed
 [7] the tariff to become effective as published with some
 [8] grammatical corrections to the—some of the phrases.
 [9] But, as far as other than the initial minimum rate an
 [10] order was issued back in—before my time in the '50s
 [11] or early '60s, I don't know of any household goods
 [12] rate that was established and set by order of the
 [13] Cabinet or the Department.

[14] Q: With regard to collectively set rates, may I
 [15] ask, do you have occasion to discuss rates which are
 [16] going to be filed by the Kentucky Association with
 [17] representatives of the Kentucky Association before
 [18] they're filed?

[19] A: Yes, I do.

[20] Q: Could you give me an example of those kinds
 [21] of discussions and how they work and what their
 [22] purpose is?

[23] A: As part of my job duties, I attend the public
 [24] meetings that the Association have, generally, they're

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[1] quarterly meetings or annual meetings. At that time
 [2] matters are discussed. Mostly the matters of current
 [3] things on the table at that time. For example, a
 [4] carrier may be asking them to change the definition of
 [5] something or add this rate or some issues we've had
 [6] here currently is excess valuation charges. At that
 [7] time also they discuss information that they have
 [8] received from their members relative to some of the
 [9] desires they have to change the tariff. I'm aware of
 [10] those discussions. If they're coming up on a general
 [11] rate increase, they'll discuss at those meetings what
 [12] they plan on proposing. Some of the bases for why
 [13] they come up with a certain percentage, whether it be
 [14] to be more in conformity with the Federal tariff—the
 [15] 400 tariff or be more in line with some of the
 [16] surrounding states. Many times they're specific into,
 [17] like, increased fuel costs. That's not really
 [18] relevant now because they have a fuel sur-charge
 [19] provision that sort of sets the increase for fuel.
 [20] But, basically those are proposed and I have become
 [21] aware of what's, quote, sort of in the mill.

[22] Q: Could this be part of the reason why
 [23] collectively set rates have not been suspended?
 [24] A: That would be one reason, most certainly, is

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[1] that they know through our discussions what I would
 [2] probably recommend as a just and reasonable adjustment
 [3] of some sort. They have some idea of what, through my
 [4] recommendations, the Cabinet would allow. And, they
 [5] have stayed within those parameters that are voiced at
 [6] those type of meetings.

[7] KTC EXHIBIT NO. 24 MARKED

[8] Q: Inviting your attention to what's been marked
 [9] as KTC 24, which is KRS 281.695, have you seen this
 [10] before?

[11] A: Could you repeat that, please?

[12] Q: Inviting your attention to what's been marked
 [13] as KTC 24.

[14] A: Okay.

[15] Q: That's KRS 281.695. I'd ask if you've seen
 [16] this before?

[17] A: Yes, I have.

[18] Q: Is this a section you have occasion to refer
 [19] to in the course of regulation of household goods
 [20] carriers?

[21] A: Yes, I do.

[22] Q: Can you tell me your understanding of the
 [23] provisions of sub-division (1) of this section?

[24] A: The—sub-division (1) gives the power of the

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[1] MR. McMAHON: Can we go off for a second?
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 [6] that?
 [7] A: Yes.
 [8] Q: That's a provision of the Kentucky
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 [10] A: That's correct.
 [11] Q: And, is that part of the program of
 [12] regulation of motor carriers that exists here in the
 [13] Commonwealth of Kentucky?
 [14] A: That is correct.
 [15] Q: And, can you basically tell us what that says
 [16] or what your understanding of it is?
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 [23] probably in rates and services. And, that latter part
 [24] there deals with liabilities—prohibition against

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[1] liability limitations.
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 [3] the Kentucky Transportation Cabinet enforces that
 [4] provision of the Constitution?
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 [20] the Constitution.
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 [22] shown to you, Section 201, contains provisions which,
 [23] among other things, prohibit common carriers from
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 [6] have separate certificates would be permitted to share
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 [19] A: Yes, I have.
 [20] Q: And, is that section of the law that you work
 [21] with in connection with your responsibilities
 [22] representing household goods carriers?
 [23] A: Yes, it is.
 [24] KTC EXHIBIT NO. 6 MARKED

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[1] Q: Okay. I invite your attention to what's been
[2] marked as KTC 6, Section—KRS 281.011 and ask if
[3] you've seen that before?

[4] A: Yes, I have.

[5] Q: I note that that contains definitions
[6] including the terms carrier, motor carrier, common
[7] carrier, irregular route common carrier and I ask if
[8] you've seen that section before?

[9] A: Yes, I have.

[10] MR. ABRAHAMSEN: Just for clarification it's
[11] motor vehicle.

[12] MR. McMAHON: 281.011.

[13] MR. ABRAHAMSEN: Yes. The term is motor vehicle.

[14] MR. McMAHON: Carrier, motor carrier, common
[15] carrier, irregular route common carrier.

[16] MR. ABRAHAMSEN: Okay.

[17] MR. McMAHON: What's the—

[18] MR. ABRAHAMSEN: No. You just skipped over motor
[19] vehicle, which is also defined—

[20] MR. McMAHON: I did. I skipped over it because
[21] it's not—I mean, you're going to have an opportunity
[22] to ask him whatever you want to, Dana, but I mean,
[23] these are the terms that are going to be relevant to
[24] the things that I'm going to ask him. But, I

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[1] encourage you to interrupt as we go along, because
[2] it's going to be a long process, so, please feel free.

[3] Q: Are you familiar with this section?

[4] A: Yes, sir.

[5] Q: Is this a section that you use in your
[6] responsibilities in regulating household goods
[7] carriers?

[8] A: Yes, it is.

[9] KTC EXHIBIT NO. 7 MARKED

[10] Q: I invite your attention to what's been marked
[11] as KTC 7. KRS 281.012. Does this section have any
[12] application in the regulation of household goods
[13] carriers as any part of the process?

[14] A: Somewhat relative to the commercial area.

[15] Q: Can you tell me what application it would
[16] have?

[17] A: It would define the local area of the city
[18] and each certificate that's granted to household goods
[19] carriers in Kentucky have a situs or point of
[20] operation. So, indirectly, Section 2 would have, most
[21] certainly.

[22] Q: So, this is a section that you use in the
[23] performance of your responsibilities in regulating
[24] household goods carriers in the Commonwealth?

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[1] A: Yes.

[2] KTC EXHIBIT NO. 9 MARKED

[3] Q: I invite your attention to what's been marked
[4] as KTC 9, which is 281.013, have you seen that before?

[5] A: Yes, I have.

[6] Q: Are there any definitions in here that would
[7] apply to any responsibilities that you perform in the
[8] regulation of household goods carriers?

[9] A: Probably not directly to household goods
[10] carriers.

[11] KTC EXHIBIT NO 10 MARKED

[12] Q: I invite your attention to what's been marked
[13] as KTC 10, KRS 281.014. Included in this section are
[14] a number of provisions. Could you tell me if any of
[15] them relate to your responsibilities in regulation of
[16] household goods carriers?

[17] A: It relates to my responsibilities as an
[18] employee. But, it doesn't appear to relate to
[19] household goods carriers. But, I have not read each
[20] one of them. But, it appears to apply to passenger
[21] vehicles.

[22] KTC EXHIBIT NO. 13 MARKED

[23] Q: And, I invite your attention to what's been
[24] marked as KTC 13, KRS 281.015, does this relate to

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[1] your responsibilities in the regulation of household
[2] goods carriers?

[3] A: I apologize. I've gotten lost there.

[4] Q: I'm sorry, it's—

[5] A: Can we go back to the last exhibit? My last
[6] statement referred to Exhibit 10.

[7] Q: Uh-huh. (Yes) One of the problems is, that
[8] one of the—when the exhibits have been marked, each
[9] page has been marked.

[10] A: Okay.

[11] Q: So, we'll be skipping KTC numbers.

[12] A: Okay. Thank you.

[13] Q: Do you see what I mean?

[14] A: Yes, I do now.

[15] Q: The next one is KTC 13. Is there anything in
[16] KTC 13 which relates to your responsibilities in the
[17] regulation of household goods carriers?

[18] A: It relates to my responsibilities. But,
[19] again, I don't see reference to household goods
[20] carriers in the definitions.

[21] KTC EXHIBIT NO. 14 MARKED

[22] Q: I invite your attention to what's been marked
[23] as KTC 14. Are you familiar with this document, it
[24] includes KRS 281.590?

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[1] information. Just all the proposed changes should be
[2] shown by filing new tariffs in the form prescribed by
[3] regs. And, it says that we may—upon showing of good
[4] cause, provide allowance for short notice as we refer
[5] to or less than statutory notice and we do do that on
[6] occasion, when we feel it's in the best interest of
[7] the public.

[8] Q: Let me ask, in the case of a household goods
[9] carrier is proposing a change in rates, would the same
[10] rules apply to a tariff publishing agency such as the
[11] Kentucky Association that's proposing a change in
[12] rate?

[13] A: Yes, it would.

[14] Q: And, would the requirements that are
[15] contained in this section apply then also to the
[16] Kentucky Association, which is proposing a change in a
[17] collectively set rate?

[18] A: Yes, it would.

[19] Q: The—withdrew. Is there a requirement that
[20] a carrier has to maintain information regarding a
[21] proposed change in a tariff rate, at its place of
[22] business, to your knowledge?

[23] A: If you're asking in the proposal process,
[24] does the proposed change have to be made public in

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[1] their office, I don't think the statute requires that.
[2] Q: Well, is there any public place where
[3] information would be available about a proposed tariff
[4] change of a household goods carrier or the Kentucky
[5] Association?

[6] A: If it's been officially filed, then it would
[7] be here in the Division of Motor Carriers.

[8] Q: Would it be available for inspection by the
[9] public here at the Division of Motor Carriers?

[10] A: Most certainly.

[11] Q: To your knowledge, has the Department ever
[12] made any direction that the Kentucky Association give
[13] notice of a proposed tariff change to any person other
[14] than carriers in the association affected by the
[15] change?

[16] A: I'm not following your question.

[17] Q: Withdrawn. Section 281.690 contains a
[18] provision which says that the carrier shall also give
[19] notice—withdrew. To your knowledge, has the Cabinet
[20] ever suspended the operation of any new rate
[21] submitted—withdrew. To your knowledge, has the
[22] Cabinet ever suspended the operation of any rate
[23] submitted by the Kentucky Association?

[24] A: Yes, it has.

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[1] Q: And, would the Cabinet's files contain
[2] documents reflecting when this occurred?
[3] A: Yes, if the proceeding was within our
[4] retention schedule.
[5] Q: What is your retention schedule?
[6] A: It varies depending on what the documents
[7] are. Generally three to five years.
[8] Q: Do you have any memory of a situation in
[9] which the Cabinet has suspended a rate filed by the
[10] Kentucky Association?

[11] A: Yes, I do.

[12] Q: Is there anything that you can tell us that
[13] would identify those situations as you sit here now?
[14] A: Other than just from memory. I don't have
[15] the document before me, if that's what you're asking
[16] me.

[17] Q: Yeah. From memory.

[18] A: We have recently suspended individually filed
[19] rates. And, let me explain that. The Association
[20] publishes a tariff that contains various, I'll call
[21] general rates. And, the carriers are allowed to file
[22] exception to those general provisions. We had some
[23] situations where things like driving time charges
[24] would be calculated differently. We've had situations

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[1] where individual carriers, in the opinion of this
[2] office or the Department, was proposing rates that
[3] were placing that particular carrier in a more
[4] positive competitive environment than the other
[5] carriers. We had carriers that provided proposed
[6] rates that were not clear, were not specific. We had
[7] most recently a carrier that submitted independent—
[8] what I refer to as an independent action or it only
[9] applies to a carrier, where a proposed flat rate—I
[10] was somewhat uncertain as to the application of that
[11] flat rate, whether it was in addition to or at the
[12] option of the carrier. And, I think we have two that
[13] are presently under suspension that are pending
[14] supplemental information.

[15] Q: Okay. Do you need a break?

[16] A: I need a break.

[17] Q: Yeah. I do too.

RECESS

[18] Q: Turning again to KTC 23, Mr. Debord, are you
[19] aware of any situation in which the Department has
[20] held a hearing and found a rate to be unjust,
[21] unreasonable or unjustly discriminatory as is
[22] described in sub-division (2) of KRS 281.690?
[23] A: Well, I don't recall in recent history where

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[1] Department of Vehicle Regulation to fix or approve
[2] rates, any rules or regulations that a carrier would
[3] propose in their tariff in addition to the rules that
[4] the Cabinet impose through the administrative
[5] regulations or statutes. They also, as I stated
[6] earlier, propose and publish rules that identify how
[7] they base their rates, how they handle things like
[8] claims. I refer to that more in addition to what the
[9] rules and regulations of the state is. The rules and
[10] regulations that they have published to either clarify
[11] the tariff or the guidelines and how the tariff is
[12] actually utilized. It says that if after a hearing is
[13] held, if it's on our own motion or upon a complaint—
[14] this verbiage is a little bit different than the one I
[15] just referred to in the one previously. It states
[16] that if we have a complaint on a rate, then we are
[17] required, it uses the word shall hold a public
[18] hearing. It also refers to the fact that the Cabinet
[19] may hold a hearing on its own motion. But, it also
[20] says that we shall, if we have a formal complaint.
[21] And, this sort of goes along those same lines that if
[22] we find a rate to be in excess, unreasonable,
[23] discriminatory, if the service is inadequate or in
[24] violation of the law and regulation, it says the—that

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[1] the Cabinet shall—excuse me, may determine a just and
[2] reasonable rate and shall fix the same by official
[3] order of the Cabinet.
[4] Q: Are you aware of any situation in which the
[5] Cabinet has fixed the rate under this section?
[6] A: In years past, I have, but not recently.
[7] Q: And, why is that, do you think?
[8] A: One of the reasons I think is back—I
[9] referred to earlier, when the regulatory scheme first
[10] was developed and household goods was removed from the
[11] exempt list, and what I mean by that is when they
[12] were—become regulated as to the rates that they
[13] charge, there was a very elaborate process that—in
[14] the Department of Motor Transportation went through
[15] where they established these minimum rates. They
[16] established, for example, territorial operational
[17] units that we refer to as situs. You know, that frame
[18] work, although I wasn't involved in it at that time,
[19] was a very workable schedule. It was very diverse
[20] work. Our state is divided into rural and urban areas
[21] and there's rates that are, I think, there's probably
[22] twenty some local rate schedules now. Back then, I
[23] think, there were five or six. But, they were inner
[24] city rates that would allow, in some of the more rural

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[1] areas with less costs, less overhead, that they could
[2] provide a cheaper service. And, then that basis was
[3] kind of added on over the years. But, the foundation
[4] was still there and it just—through general rate
[5] increases of current nature supplemented that process.

[6] KTC EXHIBIT NO. 25 MARKED

[7] Q: I invite your attention to the provisions of
[8] what's been marked as KTC 25, that's KRS 281.700 and
[9] ask if you've seen this before?

[10] A: Yes, I have.

[11] Q: And, is this a section that you have occasion
[12] to refer to in the course of your regulation of
[13] household goods carriers in the Commonwealth?

[14] A: Yes. Not as much to household goods carriers
[15] as to passengers. But—

[16] Q: And, what is your understanding of this
[17] section, if I may ask?

[18] A: Well, section (1) says that no common carrier
[19] shall abandon or change any route, except that deals
[20] with temporary route, road closings. Again, these are
[21] more or less for bus operations that—where their
[22] routes are specific. It allows them to operate off
[23] those highways for emergency conditions. It gives us
[24] notice of some of the operational processes of

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[1] passenger carriers.

[2] Q: It really doesn't have any application to—
[3] A: Possibly section (3), might have, if we had a
[4] carrier to abandon their service.

[5] Q: Are you aware of any situation in which this
[6] section has been invoked or used with respect to a
[7] household goods carrier?

[8] A: I'm not aware of any.

[9] KTC EXHIBIT NO. 26 MARKED

[10] Q: Inviting your attention to what's been marked
[11] as KTC 26, that's KRS 281.705. Are you aware of any
[12] situation in which this section has had any
[13] application to household goods carriers?

[14] A: Yes, we have.

[15] Q: Can you describe that for me?

[16] A: This gives the Department the ability to
[17] require financial reports or system of accounts.
[18] Again, this refers to some accounting terms. But,
[19] basically that allowed the Cabinet to promulgate
[20] regulations relative to financial reports from
[21] carriers.

[22] Q: Are those regulations in effect at the
[23] present time?

[24] A: Yes. They have been amended. But, there are

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[1] regulations that are in effect now that states—until
[2] just a few years ago, we required all carriers that
[3] were subject to rate regulations, to file annual
[4] financial reports. Truthfully, that became such a
[5] burden on the Cabinet through the open records
[6] statutes, we had various analysis bureaus that would—
[7] kept almost one person busy copying financial data.
[8] Because of that, we chose to eliminate that
[9] requirement and to just leave in the regulation that
[10] we shall have the right to request financial
[11] information as we see fit. But, did not mandate it on
[12] an annual basis.

[13] Q: And, does the Cabinet request financial data
[14] from household goods carriers—

[15] A: Yes.

[16] Q: —as it sees fit?

[17] A: Yes, from time to time. Yes.

[18] KTC EXHIBIT NO. 27 MARKED

[19] Q: Inviting your attention to what has been
[20] marked as KTC 27, which is KRS 281.880 and ask if
[21] you've seen this before?

[22] A: You might have me on this one. I don't know
[23] if I've seen this one before.

[24] Q: Okay. Is there—withdrawn. You had

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[1] mentioned that the Cabinet conducts audits of
[2] household goods carriers from time to time, is that
[3] right?

[4] A: Yes.

[5] Q: Is there any statute which provides authority
[6] for that process?

[7] A: Yes.

[8] Q: What statute is that, do you recall?

[9] A: I think we've already covered some of those.

[10] Q: Okay.

[11] A: But, yes, most certainly, there's a statute
[12] that allows us—I believe it says that the records
[13] shall be kept open to the public and shall be open to
[14] any—there is a general statute that gives us ability
[15] to perform investigative audits of any carrier.

[16] MR. McMAHON: Okay. Would you like to take a
[17] break for an hour at this time? It's noon.

[18] MR. ABRAHAMSEN: If that's what the witness wants
[19] to do, then we should do that.

[20] A: Fine with me.

[21] MR. ABRAHAMSEN: Okay.

LUNCH RECESS

KTC EXHIBIT NO. 28 MARKED

[24] Q: Mr. Debord, I show you what's been marked KTC

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[1] 28, which is KRS 281.900 and ask if you are—if you've
[2] seen that section before?

[3] A: Yes, I have.

[4] Q: Can you tell me, is that a section that you
[5] have occasion to refer to in the course of your
[6] regulation of household goods carriers?

[7] A: Yes.

[8] Q: And, can you explain to me what the section
[9] provides for?

[10] A: This statute establishes an Advisory
[11] Committee made up of various representatives and
[12] trucking groups. It's a form for the industry to
[13] bring problems, situations to the Cabinet's attention.
[14] And, it sets forth who serves—there's some standing
[15] members, the Secretary of Transportation is a standing
[16] member, the Revenue Cabinet Secretary and Speaker of
[17] the House, President of the Senate or their
[18] representatives. And, it just—it's a cross section
[19] of the trucking industry as appointed by the Governor
[20] to hear and voice their concerns about transportation
[21] matters.

[22] Q: Does this body ever consider any issues that
[23] deal with household goods transportation?

[24] A: I'm sure they have, that affects the

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[1] transportation of household goods. Presently I don't
[2] think there's a household mover on that board. But,
[3] then again, I don't know exactly the makeup of the
[4] board.

[5] Q: Does the body ever deal with—has the body
[6] ever—withdrawn. Has the body ever dealt with any
[7] issue that affects household goods transportation
[8] rates, to your knowledge?

[9] A: Indirectly, I'm sure, through the
[10] discussions. And, again, I'm speaking from memory.
[11] But, I think on occasion they have attended and voiced
[12] their concerns relative to illegal operations. And,
[13] that indirectly, would affect the rates, most
[14] certainly. But, as far as rate matters, I'm not aware
[15] of them specifically.

[16] Q: Who has attended and voiced their concerns?

[17] A: Members of the Association.

[18] Q: The Kentucky Association?

[19] A: Yes. It's been three or four years since

[20] I've attended one. So—

[21] Q: I will show you what has been marked KTC 40
[22] and ask if you can tell me what that is.

[23] MR. ABRAHAMSEN: I'm sorry, 40? What happened to
[24] 30 through 39?

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[1] be on an application for operating authority or a for
[2] hire application. How authorities for temporary
[3] authority, how we register interstate motor carriers
[4] subject to the SSRS program. What foreign
[5] corporations have to do. Several different items that
[6] are requirements, including the filing fees, how much
[7] certain applications adopted by reference. It adopts
[8] the federal approved single state registration
[9] program. Tells where to mail the application.

KTC EXHIBIT NO. 34 MARKED

[11] Q: I show you what's been identified as KTC 34,
[12] which is KAR 1:045, and ask if you've seen that
[13] document before?

[14] A: Yes, I have.

[15] Q: And, is this a document which—is this a
[16] regulation which you have occasion to refer to in the
[17] course of the Cabinet's regulation of household goods
[18] carriers?

[19] A: Yes, it is.

[20] Q: And, can you tell me what this regulation
[21] provides?

[22] A: Generally it sets forth the certificate or
[23] permit has to be renewed each calendar year and has to
[24] tell us when it—it's not to be renewed if it's—the

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[1] application is incomplete. Section (2) gets into how
[2] certificates can be merged and reissued. If a person
[3] held more than one type of—more than one certificate,
[4] it gives the provisions to merge those into one. I
[5] should say merge them, period, maybe not into one.

KTC EXHIBIT NO. 35 MARKED

[7] Q: I show you what's been marked as KTC 35,
[8] which is KAR 1:050 and ask if you've seen this before?

[9] A: Yes, I have.

[10] Q: Is this a regulation which you have occasion
[11] to refer to in the course of the Cabinet's regulation
[12] of household goods carriers?

[13] A: Yes, sir.

[14] Q: Does this specifically refer to household
[15] goods transportation rates?

[16] A: Yes. As well as those passenger fares that
[17] are regulated.

[18] Q: And, would this also specifically refer to
[19] household goods transportation rates contained in the
[20] Kentucky Association's tariff and supplements?

[21] A: Yes, it would.

[22] Q: And, can you tell me what this regulation
[23] generally provides?

[24] A: Well, section (1) sets forth the rules for

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[1] establishing the first time rates that—that first
[2] time rates can be approved on a less than thirty days
[3] notice. For example, someone that's recently been
[4] granted authority, they don't have to wait thirty days
[5] to file, they can file that immediately. And, it says
[6] that the Cabinet may subject the proposed tariff to
[7] investigation and shall, if it's protested. Meaning
[8] that the Cabinet must investigate if it's protested.
[9] It sets forth the guidelines there for those
[10] procedures. Tells that it be typewritten. Just—the
[11] rest of it is rules regarding changes in rates and
[12] fares.

[13] Q: Does—withdrawn. I see that section (1) of
[14] KAR 1:050 refers to protests of a proposed tariff by
[15] interested parties, is that right?

[16] A: Yes.

[17] Q: And, is that something you've ever seen?

[18] A: I don't recall ever seeing one.

[19] Q: This would apply to first time rates—

[20] A: Yes.

[21] Q: —would it not?

[22] A: I'm assuming that would be first time
[23] applicants, the rates that a new carrier would
[24] propose.

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[1] Q: I see that section (1) also speaks of the
[2] submission of a statement showing how rates, fares and
[3] charges were determined, is that right?

[4] A: What section are you referring to?

[5] Q: Section (1) of KAR 1:050.

[6] A: Yes.

[7] Q: My question is, would such a statement
[8] necessarily have to be filed if a household goods
[9] carrier were participating in the agency tariff?

[10] A: Not—probably we wouldn't require that, if it
[11] was a first time applicant.

[12] Q: Why not?

[13] A: Because we're already familiar with what the
[14] tariff—it's already—the format's already approved,
[15] you know, the form is specific, there's no issues
[16] relative to tariff clarity. The only statement that
[17] would be included would be—they would—most usually
[18] those things are published with other changes. I'm
[19] trying to recall if there's ever been a new tariff
[20] supplement that only contained a new carrier. I don't
[21] recall of one. But, that statement would be included
[22] with all the other changes of that tariff, they may
[23] say, changed—so and so files exception to this or so
[24] and so files exceptions to that. On Page 14 we're

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[1] be changes in rates or fares. Section (2) gets into
[2] changes relative to property carriers.
[3] Q: Does the Cabinet enforce all of the
[4] provisions that are contained in KAR 1:070 with regard
[5] to rate changes?

[6] A: Yes.

[7] KTC EXHIBIT NO. 39 MARKED

[8] Q: I invite your attention to what's been marked
[9] as KTC 39 and ask if you've seen that before, that's
[10] KAR 1:075?

[11] A: Yes.

[12] Q: Have you had occasion to refer to this in the
[13] course of the Cabinet's regulation of household goods
[14] carriers?

[15] A: Yes, I have.

[16] Q: And, could you tell me what this provides?

[17] A: This states the procedures that carriers must
[18] deal with relative to handling of claims. It sets the
[19] time periods that they have to respond to formal loss
[20] and damage claims of household goods. It tells what
[21] the shipper must do, if they have such a claim. And,
[22] it also requires the carrier to maintain a loss and
[23] damage claim register for review in the event
[24] interested parties or officials from the Cabinet wants

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[1] to review those.

[2] Q: Does—do claims of household goods carriers
[3] have any impact on rates at all?

[4] A: I would think so, yes.

[5] Q: In what way?

[6] A: Sort of like uncollected debt, bad debts. If
[7] some people don't pay, then that puts the burden on
[8] the rest of the world.

[9] KTC EXHIBIT NO. 40 MARKED

[10] Q: I invite your attention to what's been marked
[11] as KTC 40, which is KAR 1:080 and ask if you're
[12] familiar with that requirement?

[13] A: Yes, I am.

[14] Q: And, is this a regulation which you have
[15] occasion to refer to in the course of the Cabinet's
[16] regulation of household goods carriers?

[17] A: Yes.

[18] Q: And, this seems to have many provisions which
[19] specifically relate to household goods carriers. In
[20] fact, the regulation is entitled household goods
[21] carriers, is that right?

[22] A: That's correct.

[23] Q: And, maybe you could just give us an overview
[24] of the areas that are covered by the sections, if you

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[1] would.

[2] A: Okay. The first section deals with how the
[3] carrier establishes what the actual weights of the
[4] shipment is. It identifies what gross weight, tare
[5] weight, net weight. It gets into the fact of
[6] constructive weight, if you're not within a certain
[7] reasonable amount of place to get something weighed.
[8] It identifies the driver's weight certificate. That's
[9] the basis where we look at to make sure that they've
[10] determined their weights correctly, those are
[11] certified scale receipts. Section (2) talks about the
[12] special charges, what I refer to other than just maybe
[13] an hourly and rate distance. Section (3), again,
[14] these regulations speaks for themselves, I'm just
[15] skimming through them just to overview. But, Section
[16] (3) deals with discounting is prohibited. You can't—
[17] Kentucky still requires the charge of actual weight
[18] versus some of the interstate tariffs allows for
[19] discounting, our state does not allow any discounting
[20] of rates.

[21] Q: The Cabinet is—are you saying that the
[22] Cabinet requires, as a matter of law, that household
[23] goods carriers must collect the rate which is
[24] contained in their tariff?

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[1] A: That's correct. And, that rate cannot be
[2] discounted.

[3] Q: Please continue.

[4] A: Section (4), I've legally never understood
[5] exactly what that means. It says that no carrier can
[6] act as an agent for another carrier. So, I'll have to
[7] plead some ignorance there, other than what it says.
[8] Insurance provisions, it tells, you know, what type of
[9] insurance. You have to be an all risk. Section (6)
[10] gets into the bill of lading itself, receipt for the
[11] load, what's supposed to be on that. I'll move on to
[12] section (7) is the freight bill and—we allow the
[13] freight bill and the bill of lading to be combined.
[14] The freight bill actually identifies all the charges,
[15] whereas the bill of lading would probably include the
[16] shipper's name, where it's coming from, where it's
[17] going to. Section (8) is a repeat of the
[18] constitutional limitations on the contract and
[19] liability. Section (9) gets into how charges—about
[20] the estimates. And, again, we do not have what's
[21] referred to as binding estimates. Many states allow
[22] for binding estimates. But, again, the same as I said
[23] about discounting. Kentucky's rules do not permit
[24] what is referred to as binding estimates.

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[1] Q: When you say feds, are you referring to the
 [2] Interstate Commerce Act and successive legislation and
 [3] regulations?

[4] A: That's correct.

[5] Q: Go ahead.

[6] A: Let's see, I don't know where I'm at.

[7] Section (11) deals with a document that we require
 [8] that they give to perspective shippers called
 [9] important notice to shippers of household goods. It
 [10] tells them such things as responsibilities of the
 [11] mover themselves, responsibility of the transporter,
 [12] the shipper, things they need to be guarded against.
 [13] It's just sort of a notice—an educational brochure, I
 [14] guess, is a better word for it. There's a statement
 [15] there about minimum weights—notice about minimum
 [16] weights.

[17] Q: Is the—withdrawn. Does the Cabinet enforce
 [18] all of the provisions that are contained in KAR 1:080?

[19] A: Yes, we do.

[20] Q: Are you aware of any other state in the union
 [21] that has a provision regarding common carrier
 [22] limitation of liability in its constitution, besides
 [23] Kentucky?

[24] A: I'm not aware of it.

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[1] MR. McMAHON: Off the record.

OFF THE RECORD

[2] KTC EXHIBIT NO. 41 MARKED

[3] Q: Show you what's been identified as KTC 41,
 [4] which is also KAR 1:095 and ask if you're familiar
 [5] with this regulation?

[6] A: Yes.

[7] Q: And, is this a regulation in which you have
 [8] occasion to refer to in the course of the Cabinet's
 [9] regulation of household goods carriers?

[10] A: Yes.

[11] Q: Can you generally tell me what this provides?

[12] A: It just says who may file a complaint. It
 [13] says any interested party or the Cabinet may, at any
 [14] time, initiate a complaint concerning any matters
 [15] under jurisdiction of the Cabinet. It tells what the
 [16] formats are. It has to be in conformity with our
 [17] hearing rules under O30. Answers. You know, some
 [18] legal format that complaints have to be—that would be
 [19] in contrast to maybe a letter of concern or someone
 [20] just voicing a complaint. This outlines the rules for
 [21] a formal complaint that would probably warrant a
 [22] public hearing.

[23] KTC EXHIBIT NO. 42 MARKED

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[1] Q: I show you what's been identified as KAR 42,
 [2] which is—withdrawn. I show you what's been
 [3] identified as KTC 42, which is KAR 1:101 and ask if
 [4] you're familiar with that regulation?

[5] A: Yes.

[6] Q: And, is this a regulation you have occasion
 [7] to refer to in the course of the Cabinet's regulation
 [8] of household goods carriers?

[9] A: Yes.

[10] Q: Can you generally tell me what subject this
 [11] addresses?

[12] A: This supplements KRS 281.655 that sets forth
 [13] the insurance limits and the requirements to filing
 [14] liability cargo insurance. Pretty much identifies the
 [15] forms and the evidence needs to be filed. It
 [16] identifies the form for, in this particular case, for
 [17] example, household goods have to file cargo insurance.
 [18] And, it just adopts those forms by reference.

[19] Q: I'd like to ask you some questions about the
 [20] program of regulation the Kentucky Transportation
 [21] Cabinet has regarding household goods carriers and
 [22] household goods carriers intrastate transportation
 [23] rates. Can you tell me—does KTC have control over
 [24] the rates which are charged by household goods

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[1] carriers for intrastate transportation services in
 [2] Kentucky?

[3] A: Yes.

[4] Q: Is there a public purpose to the
 [5] Commonwealth's regulation of household goods
 [6] transportation rates in Kentucky?

[7] A: Yes.

[8] Q: Is KTC involved in the establishment of
 [9] household goods intrastate transportation rates in
 [10] Kentucky?

[11] A: Yes. The procedures of the rules and
 [12] regulations of the statutes, yes.

[13] Q: Does KTC in any way participate in the
 [14] formulation of household goods rates in Kentucky?

[15] A: Yes, we do.

[16] Q: Does KTC exercise any oversight over
 [17] household good rates in Kentucky?

[18] A: Yes. We review the filings of them. We
 [19] investigate the just and reasonableness of them. We
 [20] follow up to make sure the public is not discriminated
 [21] against by some people charging different rates.

[22] Q: Is KTC's role in the regulation of household
 [23] goods rates restricted to enforcing rates that are
 [24] privately agreed on by movers?

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[1] A: I don't understand your question.
 [2] Q: Is KTC's role in the regulation of household goods rates restricted simply to enforcing rates that are privately agreed on by movers?
 [3] A: You say restricted to only those that are privately submitted or—
 [4] Q: I'm going to withdraw the question. Does KTC do more than just act as a policing agency for a bunch of private agreements that are made by movers?
 [5] A: Most certainly, yes.
 [6] Q: Are tariff rate filings that are made by the Kentucky Association checked for mathematical accuracy?
 [7] A: Yes.
 [8] Q: By whom?
 [9] A: By myself. Me.
 [10] Q: Are there any filings made by the Kentucky Association, which are never checked?
 [11] A: Not to my knowledge.
 [12] Q: Would you know?
 [13] A: Yes.
 [14] Q: Has KTC ever requested information from the Kentucky Association with regard to proposed tariff rates?

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[1] A: Have we ever requested information? Yes.
 [2] Q: Has the Association furnished information when it has been requested?
 [3] A: Yes.
 [4] Q: Has the Association ever failed to comply to a KTC request for information?
 [5] A: I don't think the Association has ever failed to comply. Individual carriers might have had to have some follow-up activity. And, as I described earlier in my testimony, some additional requests in suspension—some type of a disciplinary action on our part to get the statutes and regulations fulfilled.
 [6] Q: But, has there ever—withdrown. Has there ever been an information request with regard to collectively set rates that the Association has failed to comply with?
 [7] A: No.
 [8] Q: Does KTC—withdrown. Is it the intention of the Kentucky Transportation Cabinet to allow collective rate making activity—
 [9] A: Yes.
 [10] Q: —by the Kentucky Association?
 [11] A: Yes. We have a statute that allows carriers either file their own tariff or become a member of the

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[1] joint tariff publishing agency.
 [2] Q: Does the Kentucky Transportation Cabinet exercise independent judgment with regard to household goods rate proposals that are made by the Kentucky Association?
 [3] A: Yes.
 [4] OFF THE RECORD
 [5] Q: Are the rates contained in the Kentucky Association household goods tariffs established as a direct result of the Kentucky Transportation Cabinet's intervention in the collective rate setting process?
 [6] MR. ABRAHAMSEN: Object to the form of the question.
 [7] Q: Withdrawn. To your knowledge, are there proposed rates contained in tariffs that are filed with KTC by the Kentucky Association?
 [8] A: You're asking, are there rates that have been filed?
 [9] Q: Yes.
 [10] A: Yes.
 [11] Q: And, is there a process known as collective rate making that has brought about the creation of the proposals that are contained in those tariffs?
 [12] A: Yes.

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[1] Q: And, would you say that the Kentucky Transportation Cabinet were permitting the rates contained in those tariffs to become effective has intervened in that collective rate making process?
 [2] A: Yes.
 [3] Q: Is the Kentucky Transportation Cabinet aware of the specific details of all of the rate filings that have been made by the Kentucky Association?
 [4] A: Yeah. We're aware of what's contained in the tariff of those, you know. We really—I do scrutinize changes that they propose, whether it's rates or change of ownership. You know, our statutes set up these authorities be granted at a—with a situs. So, even a change of address could be an important matter.
 [5] So—
 [6] Q: Do you examine the details of all of the filings they make?
 [7] A: Yes. Most certainly.
 [8] Q: They meaning the Kentucky Association.
 [9] A: Anybody that files a tariff, as far as they're concerned.
 [10] Q: Does the Kentucky Transportation Cabinet actively supervise the rate setting process as far as collectively set rates are concerned?

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[1] MR. ABRAHAMSEN: Objection. Calls for a legal conclusion.

[2] Q: You can answer that question.

[3] A: I believe so, yes.

[4] Q: Do you have any doubt?

[5] A: No.

[6] MR. McMAHON: Can we go off for a minute?

OFF THE RECORD

[7] MR. TOLSON LEAVES DEPOSITION AT 2:00 P.M.

[8] Q: Mr. Debord, let me ask you, are you a member [9] of any—and this is a question I probably should have [10] asked you earlier this morning. Are you a member of [11] or do you participate in any professional [12] organizations?

[13] A: Yes.

[14] Q: Can you tell us which organizations they are?

[15] A: Presently I'm past President of the National [16] Association of State Transportation Specialists. When [17] you're speaking—are you talking about professionally [18] or personally or—

[19] Q: Professionally. National Association of [20] State Transportation Specialists.

[21] A: Right.

[22] Q: And, what is its function?

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[1] A: It's a group of—it's an association that [2] involves the state transportation officials that have [3] joined together over the last fifty years to address [4] current transportation issues. We've developed [5] replacement procedures for the old bingo system [6] relative to the regulation of interstate motor [7] carriers. We have a committee relative to consumer [8] protection, which addresses issues where states that [9] still regulate household goods, for example, [10] passengers, we address current issues, develop uniform [11] standards. That—it also includes rail matters.

[12] Q: You say you're past President of that [13] organization?

[14] A: Yes.

[15] Q: When were you President?

[16] A: 2000/2001.

[17] Q: And, how long have you been a member of [18] National Transportation of—National Organization of [19] Transportation Specialists?

[20] A: As long as I've been employed with the state, [21] which was in 1972.

[22] Q: Any other organizations or affiliations [23] professionally?

[24] A: I have been associated with another trucking

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[1] association, work groups, Specialized Riggers [2] Conference. Been involved in, you know, historically, [3] but not currently active, you know, taxing [4] associations and groups. But, that's about it. [5] National Conference is the only one I'm presently [6] actively involved in. That's basically due to my [7] employment status at this time.

[8] Q: Have you had any exposure involvement in the [9] National Association of Regulatory Utility [10] Commissioners?

[11] A: Indirectly, yes. Through the NCSTS is [12] affiliated through the National Association of [13] Regulatory Utility Commissioners. And, our proposals [14] or findings were submitted to one of the sub- [15] committees of NARUC.

[16] Q: Thank you. Mr. Debord, between 1972 and the [17] present time, have you had occasion to attend meetings [18] of the Kentucky Association?

[19] A: Yes.

[20] Q: And, have these been—have you attended [21] membership meetings of the Kentucky Association?

[22] A: Yes.

[23] Q: Have you attended Board of Directors meetings [24] of the Kentucky Association?

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[1] A: Yes, I have.

[2] Q: And, have you attended these on a fairly [3] regular basis?

[4] A: Yes, sir.

[5] Q: And, for what purpose have you attended these [6] meetings?

[7] A: Again, it was a forum to where I could obtain [8] information relative to the industry. I would be made [9] aware of tariff change proposals. We have worked [10] together on various enforcement efforts relative to [11] illegal operators. They've had me to routinely [12] address the membership at their annual convention [13] relative to things that was going on from the [14] regulatory side that may affect them in their day to [15] day business.

[16] Q: Let me focus on the Board of Directors [17] meetings for a moment.

[18] A: Okay.

[19] Q: Would you attend Board of Directors meetings [20] as a part of your responsibilities with the Kentucky [21] Transportation Cabinet?

[22] A: Yes.

[23] Q: And, when you attended meetings of the [24] Kentucky Association's Board of Directors, would you

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[1] meeting.

[2] Q: Okay.

[3] MR. ABRAHAMSEN: Complaint counsel renews its
[4] observation for the document KTC 43, with respect to
[5] this document.

[6] KTC EXHIBIT NO. 45 MARKED

[7] Q: Turning now to what's been identified as KTC
[8] 45. It's a document entitled report of the Tariff
[9] Committee dated October 15, 1994. Do you have any
[10] memory of ever seeing this document?

[11] A: No, I haven't.

[12] Q: Do you think it's likely that you did?

[13] A: I really couldn't answer that. I don't know
[14] whether I've seen this or have not seen it.

[15] Q: On Page 2, there's a reference to an eighteen
[16] percent increase in costs for packing containers and
[17] paper products. Is that anything that you recall
[18] having any information about in 1994?

[19] A: I don't recall that.

[20] KTC EXHIBIT NO 46 MARKED

[21] Q: Turning to KTC 46—

[22] MR. ABRAHAMSEN: Complaint counsel renews its
[23] observation about KTC 45.

[24] Q: —being—what do you mean, being what?

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[1] MR. ABRAHAMSEN: That he hasn't seen it before
[2] and that it's not a document from his files.

[3] Q: Okay. Let me ask you a question. Are you on
[4] the mailing list for Kentucky Association documents?

[5] A: Yes.

[6] Q: And, how long has that been the case?

[7] A: Ever since I've been employed here.

[8] Q: Was it the case in 1994 forward?

[9] A: Yes.

[10] Q: So, from 1994 until the present time, has it
[11] been the case that you would receive mailings that
[12] were sent out to members of the Board of Directors of
[13] the Kentucky Association?

[14] A: Probably not the minutes of the meeting, they
[15] would not be included in that mailing.

[16] Q: Would you receive—

[17] A: I don't recall ever getting a special mailing
[18] with just the minutes of the proceedings.

[19] Q: Would you receive mailings that were sent to
[20] members of the Association—

[21] A: Yes.

[22] Q: —on a regular basis—

[23] A: Yes.

[24] Q: —from 1994 until the present, so far as

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[1] you know?

[2] A: As far as I know, yes.

[3] Q: Okay. Turning to KTC 46, is this anything
[4] that you recognize?

[5] A: Not off the top of my head, no.

[6] KTC EXHIBIT NO. 47 MARKED

[7] Q: Okay. What about KTC 47?

[8] A: Yes. That's sort of an example of what would
[9] be sent to us. It's a tariff bulletin, it just sort
[10] of briefly explains what's being proposed from the
[11] Association.

[12] Q: Do you—is there a tariff bulletin that's
[13] sent out every time a tariff supplement is filed?

[14] A: I think this is sent out before the tariff
[15] supplement is filed.

[16] Q: And, do you receive these?

[17] A: Yes.

[18] Q: And, is it likely you receive one of these
[19] for every supplement that's been filed during the time
[20] that you've been at KTC?

[21] A: As far as I know, yes, sir.

[22] MR. ABRAHAMSEN: Complaint counsel has a standing
[23] observation about this witness not having seen these
[24] documents before. No evidence that whatever mailings

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[1] the Association has sent out, that these were
[2] contained in such mailings.

[3] KTC EXHIBIT NO. 48 MARKED

[4] Q: Turning to KTC 48, this is a notice of a
[5] meeting of the Board of Directors dated February 15,
[6] 1995. And, it notes that you will be present to
[7] discuss a deregulation issue at an upcoming meeting of
[8] the Board of Directors. Do you have any memory of
[9] receiving this notice or being at that meeting?

[10] A: I don't particularly—I know I've attended
[11] meetings with them at the Trucking Association's
[12] office. But, I don't—this particular one, I couldn't
[13] say yes or no.

[14] Q: Do you recall being at a meeting on February
[15] 15, 1995 at the Kentucky Association's offices?

[16] A: Again, off the top of my head, I don't
[17] remember—

[18] Q: All right.

[19] A: —where I was at on that date. But—

[20] KTC EXHIBIT NO. 49 MARKED

[21] Q: I refer you to what has been marked as KTC
[22] 49, which is minutes of a Kentucky Association Board
[23] meeting held on February 15, 1995. And, in
[24] particular, the second paragraph.

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[1] A: Yes. These minutes state that I was present.
[2] Q: Does it refresh your memory. It states Mr.
[3] Debord, before the meeting was called to order,
[4] President Greg Pike introduced Mr. William Debord.
[5] A: You know, I've been to a lot of their
[6] meetings. You know, I can't recall specifically this
[7] particular meeting or any specific meeting. But, the
[8] records of the Association here leads me to believe
[9] that I was there on that day.

[10] Q: Do you have any reason to doubt that you were
[11] there on that day?

[12] A: No, sir.

[13] KTC EXHIBIT NO. 50 MARKED

[14] Q: Turning your attention to what has been
[15] marked as KTC 50 and ask if you remember seeing this
[16] document before?

[17] A: I remember seeing similar documents to this.

[18] But—

[19] Q: Do you remember being at the annual
[20] convention of the Kentucky Household Goods Carriers
[21] Association in 1995?

[22] A: Yes. I remember this one, because I recall
[23] one of the guest speakers they had on the program.

[24] Q: On page—a page which says No. 3, which has

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[1] Bates stamp KHGCA 0042 on it, is a section which says
[2] Director, Division of Motor Carriers, William Debord,
[3] do you see that?

[4] A: Yes.

[5] Q: Does that refresh your memory as to what you
[6] might have discussed at that meeting?

[7] A: Yes. That was—we had a couple of
[8] enforcement issues relative to those that had no
[9] authority and those within the Association that could
[10] be charging rates contrary to their tariff. That
[11] particular one I do remember, because, as I said, the
[12] guest speaker was—I remember that one.

[13] KTC EXHIBIT NO. 51 MARKED

[14] Q: I refer you to what's been marked as KTC 51.
[15] Have you ever seen this document?

[16] A: I'm familiar with documents similar to this.
[17] But, whether I've seen this particular one, I'm not
[18] positive.

[19] Q: To your knowledge, does this set forth an
[20] accurate schedule of supplements issued by the
[21] Kentucky Association in the year preceding 199—April
[22] 28th, 1995?

[23] A: I have no reason to think it doesn't. Most
[24] usually those summaries are very accurate.

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[1] KTC EXHIBIT NO. 54 MARKED
[2] Q: I turn your attention to what's been marked
[3] as KTC 54. Have you ever seen that document before?
[4] MR. ABRAHAMSEN: I beg your pardon. Could you
[5] identify it?

[6] Q: Kentucky intrastate household goods
[7] registration card.

[8] MR. ABRAHAMSEN: Thank you.

[9] A: Yes.

[10] Q: Can you tell me what that is and what its
[11] purpose is?

[12] A: That is a document we issue to carriers that
[13] have renewed their authority. It identifies the scope
[14] of their authority as well as how many vehicles
[15] they're allowed to operate during that year.

[16] Q: Do you—withdrew. Do you recall a time in
[17] or around September of 1995 when you requested from
[18] the Kentucky Association or its counsel information
[19] regarding a number of local moves, intrastate moves
[20] and interstate moves performed by members of the
[21] Kentucky Association?

[22] A: I don't recall.

[23] KTC EXHIBIT NO. 56 MARKED

[24] Q: I refer you to what's been marked as KTC 56,

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[1] which purport to be minutes of the Association's Board
[2] meeting dated—held on September 20, 1995. And, under
[3] legal report, if you'll look there, Counsel William
[4] Willis is making a report regarding you.

[5] A: Correct.

[6] Q: Does that refresh your memory?

[7] A: I can't say that it does, other than it says
[8] that I've requested some information relative to
[9] number of moves. It appears I was trying to solicit
[10] some information relative to some type of idea of how
[11] much of their business was intrastate versus
[12] interstate. I think at this time we'd already
[13] repealed that regulation that required that to be on
[14] an annual basis. And, as I've testified earlier, I'm
[15] assuming we were just trying to obtain some
[16] information on the percentage of their local moves
[17] versus interstate.

[18] Q: Would you—

[19] A: Which it's usually my information that I have
[20] that most of these carrier's business is involved in
[21] interstate transportation. And, a small portion of
[22] them in intrastate.

[23] Q: Is this information that you would have been
[24] looking for as part of the Cabinet educating itself on

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[1] discounted rates and the binding estimates. And, that
[2] was putting them in an unfair position of offering to
[3] the public a discounted rate.

[4] KTC EXHIBIT NO. 96 MARKED

[5] Q: I refer you to what's been marked KTC '96,
[6] which purports to be minutes of a Board of Director's
[7] meeting of the Kentucky Association on July 16th,
[8] 2003. I'll just ask, is that a fairly accurate report
[9] or summary of what your comments were at that time?

[10] A: Yes. I discussed some of the—we had some
[11] changes in personnel at that time. And, I wanted to
[12] caution that they review their files and make sure
[13] they have all their paperwork in order for that
[14] particular renewal year.

[15] Q: The audit process that you just mentioned, is
[16] that a process of auditing household goods carriers?

[17] A: Yes.

[18] Q: And, could you explain to me how that works?
[19] How it's set up and how many carriers were audited
[20] over what period of time?

[21] A: Well, we set a goal of doing audits—all the
[22] carriers within an eighteen month period. I got to
[23] about, oh, I'd say, ninety-five percent of them. And,
[24] I had some issues I was responsible for through the

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[1] National Association, that's when I was elected
[2] President. I had to donate quite a bit of time to
[3] that. So, that limited my, you know, statewide travel
[4] to some degree. And, basically we just—I would go to
[5] the carrier and make sure they had their tariff, make
[6] sure they were up to date. That's one of the major
[7] violations we do run across, is they—you know, their
[8] current rate schedules may not be there. They may—
[9] some of them out of improper filings or whatever would
[10] have the wrong schedules. Review their files of some
[11] of them and make sure they were issued a bill of
[12] lading that—I'd visually look at their rates and see
[13] if they were according to their tariff. I would
[14] usually either copy or transcribe to a form that I
[15] have, it's called an audit form, and then later back
[16] in the office, do the math calculations just to make
[17] sure that the math was correct. But, there was some
[18] part in extreme eastern Kentucky that I hadn't gotten
[19] to audit, but most of them have been.

[20] Q: During the course of your performance of
[21] household goods carrier audits, do you investigate or
[22] learn any information regarding household goods
[23] carrier costs or revenue?

[24] A: You learn a lot from the on site audits,

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[1] because, you know, they'll—I'll use the word complain
[2] relative to economic issues. And, many of them
[3] they'll blame government for those cost increases,
[4] such as taxes and high Workmen Comp rates. You know,
[5] many times those can be very informative as to the
[6] economic condition of the carrier themselves.

[7] Q: Is this information that's used by you in
[8] influencing the Cabinet's decisions on proposed rates
[9] contained in the Kentucky Association's tariffs as
[10] they're filed from time to time?

[11] A: It could be, along with other issues. I
[12] wouldn't say that a particular carrier would influence
[13] those decisions. But, after several interviews or
[14] compliance reviews, you get a better picture of the
[15] industry themselves.

[16] Q: My question is more based on the cost
[17] information and revenue information that you develop
[18] through conducting audits, whether that information
[19] assists or influences the Cabinet in making its
[20] decisions on collective rate filings?

[21] A: Yes, it would.

[22] MR. McMAHON: Let's go off for a second.

OFF THE RECORD

[23] Q: Mr. Debord, do you recall learning any

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[1] information regarding the filing of a supplement by
[2] the Association which would contain a new schedule E
[3] covering charges for local moving which was to be
[4] issued on September 1st, 2003?

[5] A: I don't recall anything, no.

[6] Q: Did you hear any report about any discussions
[7] regarding an increase in the local moving rates
[8] regarding such a supplement?

[9] A: Yes. There were some discussion about, you
[10] know, those changing the tariff. I don't know if it
[11] had a general application or not, but at least,
[12] specific carriers.

[13] Q: Are you aware of any discussions which took
[14] place at the Kentucky Association regarding Item 136
[15] and evaluation charges in the tariff?

[16] A: Yes, I do.

[17] Q: And, what knowledge do you have of those
[18] discussions, if anything?

[19] A: Well, as I've already testified, that—there
[20] was some discussions about changing the format
[21] relative to these charges. And, I had some concern
[22] based upon the Kentucky Constitutional prohibition,
[23] that the language not limit the carrier's liability.
[24] And, I remember explaining to them the court case. We

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[1] suspended a rate proposal by a freight carrier several
[2] years ago relative to that matter. And, the matter
[3] was later litigated to the Franklin Circuit Court that
[4] allowed for excess valuation charge in contrast to
[5] limiting a carrier's liability. The Court said that a
[6] carrier could charge more for assuming the additional
[7] liability of handling or moving excess valued
[8] shipments. I recall those discussions.

[9] Q: Mr. Debord, do you recall attending a meeting
[10] of the Kentucky Association's Board of Directors on
[11] February 12, 2003?

[12] A: I remember attending all the—last year, I
[13] think I attended all of them.

[14] KTC EXHIBIT NO. 94 MARKED

[15] Q: I invite you to examine what's been marked as
[16] KTC 94, which may refresh your recollection. Do you
[17] remember being present for discussion at that time
[18] regarding Supplement 79?

[19] A: I believe that's where they published this
[20] revision to Item 136. Yes.

[21] Q: Do you remember being present for discussions
[22] relative to Item 136 mirroring tariff 400N?

[23] A: Yes, I do.

[24] Q: And—

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[1] A: And, I remember them discussing about the
[2] grandfather clock.

[3] Q: Is tariff 400N one of the items that you
[4] examine from time to time in an effort to investigate
[5] cost information or information which would justify
[6] the charges of movers?

[7] A: Yes. If a tariff filing makes reference to,
[8] for example, an increase on the interstate level, if
[9] they were trying to propose the same on an intra
[10] level, then we do ask that they file with us or make
[11] available to us those affected interstate tariffs.

[12] And, I think 400J, I forget what they're up to now,
[13] but the 400 series of interstate tariff.

[14] Q: Does the Cabinet subscribe to tariff 400 and
[15] have it on the premises at all times?

[16] A: No, we do not.

[17] Q: Was there a time when the Cabinet did have
[18] tariff 400 available to it at all times?

[19] A: Yes. At one time we did maintain all
[20] interstate tariffs.

[21] Q: Up until when?

[22] A: I would say roughly 1990, late '80s.

[23] Q: And, subsequent to that time, have you had
[24] access to the interstate tariff to examine it in

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[1] connection with intrastate filings where it's been
[2] necessary?

[3] A: Not in its entirety, but sections of it.

[4] Q: And, how would you obtain it?

[5] A: The Tariff Association would file that with
[6] their proposal.

[7] Q: The Kentucky Assoc—

[8] A: Yes. That would be part of their
[9] justification for the rate increase, if they were
[10] basing them on the interstate level.

[11] Q: And, examination of the interstate tariff 400
[12] would be part of what the Cabinet would base its
[13] decision to allow rates to become effective on?

[14] A: We would use that information. However, we
[15] probably would not have used that on this particular
[16] one, because there's some conflict there with
[17] interstate rules versus our Constitutional provisions.

[18] So—but in most cases, if they had been approved on an
[19] interstate level, then we don't reinvent the wheel and
[20] make them rejustify through our agency.

[21] Q: Do you see that on February 12th, 2003, the
[22] minutes also report that there was a discussion
[23] regarding a three percent increase on the
[24] transportation rates in section (2), do you remember

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[1] that discussion?

[2] A: I remember the—I think this one was more not
[3] tied to interstate, because the rates are somewhat
[4] less in interstate than some of the surrounding
[5] states. I knew there was some—I remember some
[6] discussions regarding the intra rates in Indiana,
[7] Missouri and some of the other surrounding states. I
[8] don't recall if this was tied to an interstate rate or
[9] not.

[10] Q: Do you recall being at a meeting of the
[11] Kentucky Association on July 10, 2002?

[12] A: I think I've—other than my mother's
[13] emergency surgery, I think the last couple years, I've
[14] attended all of them. So, I—I'll reanswer that, that
[15] I don't recall what happened on that date, just by
[16] memory as I sit here.

[17] KTC EXHIBIT NO. 92 MARKED

[18] Q: I refer you to KTC 92, which purports to be
[19] minutes of the Kentucky Association meeting held on
[20] July 10th, which indicates you're present—your
[21] presence. And, do you recall there being discussion
[22] regarding supplement No. 75 at that time?

[23] A: I don't remember what 75, off the top of my
[24] head, referred to.

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[1] Q: Do you recall making a report regarding a
[2] criminal case against Luke Lamb?

[3] A: Yes.

[4] Q: I see reference to tariff seminars. Can you
[5] tell me what that's about?

[6] A: We had—the Cabinet was in the process of
[7] educating the carriers as to what—the records they
[8] need to keep, the rules and regulations pertaining
[9] just to household goods carriers. And, we asked the
[10] Association to assist in that endeavor. Although we
[11] invited all household good carriers, the members of
[12] the Tariff Committee and the Executive Director of the
[13] Kentucky Household Goods Association attended most of
[14] all those. Again, we went over—I noticed one of the
[15] exhibits earlier was a handout that I provided each
[16] attendee. Actually we mailed them to everybody. We
[17] mailed them to all of them. It just outlined what the
[18] rules and regulations was. What matters had to be—
[19] what records had to be kept. We pointed out that, you
[20] know, they had to charge their rates in their tariff.
[21] They couldn't do estimates or binding estimates or
[22] discounts, because at that time we had been receiving
[23] a lot of complaints from the public regarding why one
[24] person would offer a fifty percent discount and

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[1] another mover would not. And, so, we were using that
[2] as more of a—as a time saver more than a one on one
[3] audit. We were wanting to get the word out to educate
[4] the movers and try to increase their voluntary
[5] compliance, rather than an on site visit. And, we
[6] probably held seven or eight of them across the state.

[7] Q: Over what period of time?

[8] A: Eighteen months, two years maybe less than
[9] that. I think we had maybe four or five in probably
[10] the mid summer.

[11] Q: Of what year?

[12] A: I would guess, my memory, 2002. And, then we
[13] had some more in 2001 and some more in 2002.

[14] Q: Other than those seminars in 2001 and 2002,
[15] has the Cabinet put on any other presentations
[16] regarding tariff rate matters for members of the
[17] Association at any time?

[18] A: Well, usually each year at their annual
[19] membership or annual conference as they're referred
[20] to, we're on the program and we—that is the attendees
[21] of the full membership and we discuss concerns and
[22] issues, violations that I've noted. Of course, I
[23] don't specifically name violations of members, but
[24] generally speaking we tell them some of the things

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[1] we're finding wrong so they will avoid those mistakes.

[2] Q: Were rate matters discussed at that time?

[3] A: Yes.

[4] Q: And, how many times have you or the Cabinet
[5] made presentations at the Kentucky Association's
[6] annual convention since 1972, would you say
[7] approximately?

[8] A: I would say I have attended—there were some
[9] conflicts with some of my other responsibilities for—
[10] on and off. But, I would say eighty or ninety percent
[11] of the time, eighty-five percent, I don't know. A
[12] large number of them, and it may be even more than
[13] that, I don't know.

[14] KTC EXHIBIT NO. 91 MARKED

[15] Q: I note that the minutes of the Association's
[16] Board of Directors meeting and general business
[17] meeting on May 18 reflect your presence. I wonder—if
[18] you'll refer to KTC 91, do you recall there being—
[19] being present for a discussion at that meeting
[20] regarding the interstate tariff new liability and
[21] evaluation provision?

[22] A: I recall the discussion of the Association
[23] wanting to pattern their intrastate rule after the
[24] interstate. And, as I said earlier, I recall the

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[1] discussion we had relative to making sure that it did
[2] not violate our constitutional provision. And, again,
[3] I refer to the Purolator Courier case where we got the
[4] ruling from the Franklin Circuit Court that movers,
[5] not necessarily movers, but freight carriers could
[6] charge extra for high value shipments.

[7] Q: Do you recall Mr. Rick Taylor of the Division
[8] of Motor Carriers making a presentation at that
[9] meeting?

[10] A: Yes. He would have been my boss at that
[11] time.

[12] Q: Do you recall Assistant Director Denise King
[13] making a presentation at that meeting?

[14] A: Yes. That was their annual meeting.

[15] Q: Do you recall making a report at the February
[16] 20th, 2002 meeting of the Kentucky Association's Board
[17] of Directors on subjects including financial
[18] reporting, tariff seminars and problems concerning
[19] situs issues?

[20] A: I recall the financial part as well as the
[21] other two. But, on the financial part, as I had
[22] described earlier, the Cabinet had a rule in place at
[23] one time making it mandatory for movers and other
[24] regulated carriers to file annual financial reports.

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[1] And, I had run across a couple of movers that were,
[2] according to our records, active, but during my tariff
[3] compliance review, they would state that they were not
[4] doing any business. I'd ask to look at their bill of
[5] lading, freight bills, to audit them for tariff
[6] compliance. They would tell me, well, we don't have
[7] any Kentucky intra moves, it's all interstate. And,
[8] so I remember bringing that matter to the attention of
[9] the Association on behalf of their members that it was
[10] a possibility, and that still is a possibility, by the
[11] way, and we may have to bring back into play the
[12] annual financial report in order to have some type of
[13] a tool to deny their claim for no operation.

KTC EXHIBIT NO. 90 MARKED

[14] Q: I invite your attention to what's been marked
[15] as KTC 90. I just want to confirm, were you present
[16] at the meeting of the Board of Directors on February
[17] 20th, 2002?

[18] A: Yes.

[19] Q: Do you recall there being a discussion
[20] regarding tariff supplements and a two percent sur-
[21] charge for insurance related revenue at that time?

[22] A: I recall the insurance part of it, most
[23] certainly.

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KTC EXHIBIT NO. 89 MARKED

[24] Q: Inviting your attention to what's been marked
[25] as KTC 89 and ask if you recall being present at a
[26] meeting of the Kentucky Association's Board of
[27] Directors meeting held on July 11th, 2001?

[28] A: Nothing particularly rings a bell in this
[29] particular meeting, but it appears I was there.

[30] Q: Do you recall discussing illegal advertising
[31] by illegal yellow pages advertising by unlicensed
[32] movers at that time?

[33] A: I recall that situation, because during that
[34] period of time, we were involved in obtaining local
[35] yellow page documents. And, we were sending letters
[36] to those carriers that were advertising, but did not
[37] have authority. So, we probably did 100 or so of
[38] those during that period of time.

[39] Q: Do you recall there being—

[40] A: That was—

[41] Q: I'm sorry, sir.

[42] A: That was through cooperation with Mr. Taylor,
[43] my boss, at that time.

[44] Q: Do you recall there being discussion
[45] regarding computerization of the Kentucky Association
[46] tariff at that time?

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[47] A: Yes, I do. I remember the gentleman that
[48] wanted to put all of it on computer disk. And, there
[49] was some work, they did furnish that tariff. The idea
[50] was to put the tariff on a computer disk and some work
[51] was done on that. And, as a matter of fact, some of
[52] the work was relatively useful for me, because—I
[53] forgot his name, that done some work on that.

[54] Q: There's reference in the minutes to a
[55] discussion regarding joint work of the Kentucky
[56] Association and the State of Kentucky on power of
[57] attorney forms. Can you tell me what that's about?

[58] A: Yes. We had undertaken an update. Companies
[59] had changed owners, but kept the same name. The
[60] records—as a person came into the Association, we
[61] require them to file with us a power of attorney that
[62] actually says that as a mover, we have employed this
[63] Association to act on our behalf to file tariffs with
[64] the state. And, some of those signatures were
[65] previous owners, people that no longer was alive. So,
[66] in order to update those records, we asked the
[67] Association—we mailed out the letter, but we asked
[68] the cooperation through the Association to help us get
[69] those back in to assist them as being in proper
[70] compliance and for us to have our records updated.

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[71] Q: Does the Cabinet require that power of
[72] attorney forms from participants in the agency tariff
[73] be filed with the Cabinet?

[74] A: Yes. A copy of it filed in the Cabinet, yes.

[75] Q: And, the Cabinet itself was active in the
[76] process of soliciting and obtaining those forms from
[77] the participants in the tariff?

[78] A: Yes. It was our—it was actually our
[79] procedure. As a matter of fact, I think the letter
[80] even stated that this is no fault of yours, but, you
[81] know, we're wanting to upgrade our files. I'll give
[82] you an example, and I know we have people that we had
[83] a power of attorney on file signed by Vincent Fister
[84] for his company and he had been dead probably ten
[85] years. So, like, ABC Movers may have told from one
[86] owner to another and had an old owner signature. So,
[87] we wanted to make sure those were up dated.

[88] Q: Isn't it a fact that in most states where
[89] agency tariffs are filed with regulatory bodies that
[90] the state regulatory body does not require the filing
[91] of the power of attorney, but that the tariff filing
[92] agency only has to have it on file?

[93] A: I'm not aware of that.

[94] Q: Was this something that took a substantial

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[1] amount of time on your part to do?
 [2] A: Somewhat, because we have probably—first of
 [3] all, we had to separate the ones out that were no—
 [4] that were not a member of the Association. We have
 [5] probably twenty companies that are movers in the
 [6] state, they're not associated with this Association.
 [7] So, we had to identify who those people were. And,
 [8] then there was some follow-up on the association's
 [9] part. As I said, they assisted us in getting that
 [10] together.

KTC EXHIBIT NO. 88 MARKED

[11] Q: KTC 88 constitutes what purport to be minutes
 [12] of the Kentucky Association's May 19th, 2001, Board of
 [13] Directors meeting. Do you recall giving your report
 [14] at the board meeting at that time regarding auditing
 [15] the records of household goods carriers?
 [16] A: Yes. This was in the midst of my statewide
 [17] audit process. And, I was going back to some of them
 [18] a second time and finding the same errors. And, I
 [19] advised them at that time when the second offense
 [20] occurred, and we had two or three in mind there, where
 [21] we went back the second time, the carrier was still
 [22] violating their tariff and they were informed that
 [23] they would be subject to being cited for failure to
 [24] comply with the law and their certificates suspended.

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[2] Q: On that same day, May 19, 2001, did you also
 [3] deliver a report on behalf of the Division of Motor
 [4] Carriers to the general membership of the Kentucky
 [5] Association?
 [6] A: Yes. This was the same meeting. Normally on
 [7] the annual meetings, I do not attend all of the board
 [8] meetings, because usually that's when they elect
 [9] officers and issues of relevancy to us was less
 [10] important. So, not always, but in most cases, I would
 [11] not appear though—appear at the morning session of
 [12] the Board of Directors.

[13] Q: Do you recall there being a ten percent
 [14] increase in intrastate transportation charges that was
 [15] effective January 1st, 2000, Mr. Debord, containing
 [16] supplement No. 61?

[17] A: That was—that would have been the one that
 [18] shortly after my retirement I remember staff here
 [19] called me checking about what they needed to do to—
 [20] that was their first time to receive one of those in
 [21] my absence. So, they called me to obtain information
 [22] on what they needed to do. And, I explained to them
 [23] what they needed to do, was to get the justification,
 [24] you know, maybe interview some of the movers to find

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[1] retirement.

[2] KTC EXHIBIT NO. 81 MARKED

[3] Q: I will refer you to what's been marked as KTC
[4] 81, which reflects presentations being made by various
[5] people associated with the Cabinet on Page 2. Can you
[6] tell me, were you present at that meeting?

[7] A: Yes, I was.

[8] Q: And, did you, in fact, make a presentation at
[9] that meeting?

[10] A: I did.

[11] Q: And, did Director Taylor make a presentation
[12] at that meeting?

[13] A: Yes.

[14] Q: And, did Assistant Director Mark Bell make a
[15] presentation at that meeting?

[16] A: Yes.

[17] Q: And, Senior Staff Assistant Denise King?

[18] A: Yes.

[19] Q: And, did Division of Hearings representative
[20] Louis Amato make a presentation at that hearing?

[21] A: Yes, he did.

[22] Q: Do you recall there being discussion
[23] regarding the addition of an item to the tariff which
[24] would be a bulky surcharge for big screen televisions

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[1] in excess of forty-one inches in height at that time?

[2] A: I don't recall that specific matter.

[3] Q: Do you recall a time when there would have
[4] been discussion regarding additions to an item in the
[5] tariff regarding big screen t.v.'s., gun safes,
[6] cabinets and lockers, grandmother clocks, revisions
[7] for automobiles, motorcycles, farm equipment and pick-
[8] up trucks?

[9] A: Now, that you've quoted that, I do recall
[10] them speaking about the bulky items and the need to
[11] adjust those to include, you know, more current things
[12] that people would have in their household, such as
[13] clocks and larger automobiles. I recall some general
[14] subject matter of the bulky—things—the big screens
[15] that people now have they didn't have when the tariff
[16] was last published.

[17] Q: These issues would have been discussed with
[18] you by representatives of the Association?

[19] A: They would be discussed there. I would have
[20] been exposed to hearing their discussions. I don't
[21] recall any comments I might have made either way, one
[22] way or the other. But—

[23] MR. ABRAHAMSEN: Were you reading from one of the
[24] documents?

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[1] MR. McMAHON: Yeah. I'm trying to speed things
[2] up here by not—
[3] MR. ABRAHAMSEN: I appreciate that. I know. I
[4] don't want to slow you down.
[5] MR. McMAHON: That's okay. I'll tell you what it
[6] was, it was KTC 80.

[7] KTC EXHIBIT NO. 80 MARKED

[8] OFF THE RECORD

[9] MR. ABRAHAMSEN: Is it Bates 0290?

[10] MR. McMAHON: 0290.

[11] MR. ABRAHAMSEN: Okay.

[12] KTC EXHIBIT NO. 77 MARKED

[13] Q: Referring to what's been marked as KTC 77,
[14] Mr. Debord, do you recall sending correspondence to
[15] the Association regarding the use of Kentucky
[16] intrastate bills of lading for use in second and third
[17] proviso household goods shipments?

[18] A: I don't recall just by hearing that
[19] statement.

[20] Q: Do you—does it refresh your recollection to
[21] look at the—

[22] A: I guess what this is referring to is that was
[23] a new federal mandate towards states to only regulate
[24] residential probably that was correcting the bill of

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[1] lading that they had in existence for several years.

[2] Q: Was it KTC's policy that after January 1st,
[3] 1996, that a household goods bill of lading should not
[4] be used for what was formerly second and third proviso
[5] household goods?

[6] A: That is correct. There were some question as
[7] to whether they were required to use it. Of course,
[8] our own position is that we—that they would not be
[9] required since the state had no regulatory authority
[10] over their rates that we charge.

[11] Q: Was this by reason of the ICC termination act
[12] of 1995?

[13] A: Yes.

[14] KTC EXHIBIT NO. 76 MARKED

[15] Q: Referring to what's been marked as KTC 76, I
[16] would ask if you recall being present at a meeting of
[17] the Kentucky Association held on May 9th, 1998?

[18] A: Yes.

[19] Q: Do you recall making a presentation that—
[20] withdrawn. Is it true you made a presentation at that
[21] time regarding the definition of household goods in
[22] Kentucky?

[23] A: Yes. I didn't—I recall the presentation
[24] regarding the increase in fines and also the empower

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[1] Kentucky endeavor that I was involved in.
 [2] Q: Can you tell us what that was about?
 [3] A: Yes. They were—the Governor picked our
 [4] division as an effort to eliminate waste and
 [5] unnecessary paperwork. And, for some period of time
 [6] there, I was assigned to that program, working with
 [7] the Governor to save taxpayers' money and to be—the
 [8] government to be more efficient. And, out of that
 [9] process we come up with our one stop operation. We
 [10] combined forms. Part of the outfall was the seminars
 [11] we did to increase voluntary compliance.

[12] Q: Do you recall there being a revision in the
 [13] Kentucky Association tariff in order to effect
 [14] compliance with the change in definition of household
 [15] goods necessitated by both Kentucky law and federal
 [16] law?

[17] A: Yes, I recall that matter. I don't the exact
 [18] dates, but I recall the process.

[19] MR. McMAHON: Off the record.

OFF THE RECORD

[20] KTC EXHIBIT NO. 74 MARKED

[21] Q: In KTC 74, which purports to be the minutes
 [22] of the Kentucky Association's board meeting held on
 [23] February 11, 1998. There was a report that Tariff

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[1] Committee Chairman Mirus intended to discuss various
 [2] matters with the Division of Motor Carriers including
 [3] alphabetizing exceptions to items by carrier in the
 [4] tariff and also the need to reissue tariff No. 5. Do
 [5] you recall such discussions ever took place?

[6] A: Yeah. I recall the discussion we had with
 [7] them. I don't know that I was at this meeting. But,
 [8] there was some concern because there were so many
 [9] exceptions to the various rates in the tariff. And,
 [10] there still exists a large number of exceptions or
 [11] what I refer to as individual exceptions or individual
 [12] filings with the tariff. And, some of the members
 [13] felt it was very difficult to use because there were
 [14] so many exceptions that you almost had to look—there
 [15] were several pages and still are of exceptions. But,
 [16] they wanted to try to organize them to where they
 [17] could be more understandable, more useful.

[18] Q: What was the Cabinet's position on that
 [19] issue?

[20] A: We were most certainly in favor of it.

[21] Q: Why?

[22] A: It was very difficult to—if we did a
 [23] compliance review, it was very difficult to look
 [24] through all the pages and make sure that—I think, if

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[1] my memory serves me, all those exceptions were either
 [2] in one area or maybe towards the back of the tariff.
 [3] So, you had to have a pretty strong knowledge of the
 [4] whole tariff in order to know who was stepping out of
 [5] what rate.

[6] Q: I believe it states interest in having
 [7] uniformity in those rates is more important than the
 [8] rights of individual carriers to have exceptions in
 [9] those individual cases?

[10] MR. ABRAHAMSEN: Object to the form of the
 [11] question.

[12] Q: Go ahead.

[13] A: I think most certainly we've always
 [14] encouraged individual filings. But, this was just—
 [15] our opposition was more that the tariff was becoming
 [16] somewhat messy and unorganized. And, this process
 [17] would organize those exceptions to where the user
 [18] could be more user friendly.

[19] Q: When you speak of user, to whom do you refer?

[20] A: The person that reviews the tariff, myself
 [21] that would audit the tariff, the user would be just
 [22] anybody that was exposed to the tariff who had access
 [23] to it that wanted to review it.

[24] KTC EXHIBIT NO. 74 MARKED

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[1] Q: KTC 74, which consists of the February 11th,
 [2] 1998 minutes also purports on changes in the Household
 [3] Goods Carriers Bureau tariff 400, including replacing
 [4] shuttle rates with a flat charge. Do you recall
 [5] Chairman Mirus ever discussing this issue with you?

[6] A: I recall just the issue, not necessarily
 [7] specific detail involved with it.

[8] Q: There was also a change in the interstate
 [9] tariff 400, which contemplated rolling a warehouse
 [10] handling charge into the first day of storage and
 [11] transit charges. Do you recall Chairman Mirus
 [12] discussing this issue with you?

[13] A: I recall the matter, yes.

[14] Q: Do you recall any disposition of that issue?

[15] A: Not just from my memory, no.

[16] MR. McMAHON: Off the record.

OFF THE RECORD

[17] KTC EXHIBIT NO. 70 MARKED

[18] Q: Referring to KTC 70, which purports to be
 [19] minutes of the Kentucky Association's board meeting
 [20] held on October 15, 1997. There was discussion
 [21] regarding an eight percent increase to be included in
 [22] a tariff supplement. Do you have any memory of any
 [23] discussion regarding that issue—

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[1] retirement.

[2] KTC EXHIBIT NO. 81 MARKED

[3] Q: I will refer you to what's been marked as KTC
[4] 81, which reflects presentations being made by various
[5] people associated with the Cabinet on Page 2. Can you
[6] tell me, were you present at that meeting?

[7] A: Yes, I was.

[8] Q: And, did you, in fact, make a presentation at
[9] that meeting?

[10] A: I did.

[11] Q: And, did Director Taylor make a presentation
[12] at that meeting?

[13] A: Yes.

[14] Q: And, did Assistant Director Mark Bell make a
[15] presentation at that meeting?

[16] A: Yes.

[17] Q: And, Senior Staff Assistant Denise King?

[18] A: Yes.

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[1] in excess of forty-one inches in height at that time?

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[18] Q: What was the Cabinet's position on that
 [19] issue?

[20] A: We were most certainly in favor of it.

[21] Q: Why?

[22] A: It was very difficult to—if we did a
 [23] compliance review, it was very difficult to look
 [24] through all the pages and make sure that—I think, if

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[1] my memory serves me, all those exceptions were either
 [2] in one area or maybe towards the back of the tariff.
 [3] So, you had to have a pretty strong knowledge of the
 [4] whole tariff in order to know who was stepping out of
 [5] what rate.

[6] Q: I believe it states interest in having
 [7] uniformity in those rates is more important than the
 [8] rights of individual carriers to have exceptions in
 [9] those individual cases?

[10] MR. ABRAHAMSEN: Object to the form of the
 [11] question.

[12] Q: Go ahead.

[13] A: I think most certainly we've always
 [14] encouraged individual filings. But, this was just—
 [15] our opposition was more that the tariff was becoming
 [16] somewhat messy and unorganized. And, this process
 [17] would organize those exceptions to where the user
 [18] could be more user friendly.

[19] Q: When you speak of user, to whom do you refer?

[20] A: The person that reviews the tariff, myself
 [21] that would audit the tariff, the user would be just
 [22] anybody that was exposed to the tariff who had access
 [23] to it that wanted to review it.

[24] KTC EXHIBIT NO. 74 MARKED

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[1] Q: KTC 74, which consists of the February 11th,
 [2] 1998 minutes also purports on changes in the Household
 [3] Goods Carriers Bureau tariff 400, including replacing
 [4] shuttle rates with a flat charge. Do you recall
 [5] Chairman Mirus ever discussing this issue with you?

[6] A: I recall just the issue, not necessarily
 [7] specific detail involved with it.

[8] Q: There was also a change in the interstate
 [9] tariff 400, which contemplated rolling a warehouse
 [10] handling charge into the first day of storage and
 [11] transit charges. Do you recall Chairman Mirus
 [12] discussing this issue with you?

[13] A: I recall the matter, yes.

[14] Q: Do you recall any disposition of that issue?

[15] A: Not just from my memory, no.

[16] MR. McMAHON: Off the record.

OFF THE RECORD

[17] KTC EXHIBIT NO. 70 MARKED

[18] Q: Referring to KTC 70, which purports to be
 [19] minutes of the Kentucky Association's board meeting
 [20] held on October 15, 1997. There was discussion
 [21] regarding an eight percent increase to be included in
 [22] a tariff supplement. Do you have any memory of any
 [23] discussion regarding that issue—

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[1] A: Not—

[2] Q: —not at the board meeting, but elsewhere?
 [3] A: I recall the packing rate only. Increased
 [4] the packing rate. Again, I think that was to bring it
 [5] into—more into compliance with the federal 400
 [6] tariff.

[7] Q: Is that something that was acceptable to the
 [8] Cabinet?

[9] A: Yes.

[10] KTC EXHIBIT NO. 68 MARKED

[11] Q: Referring to KTC 68, which purport to be the
 [12] minutes of the Kentucky Association's Board meeting
 [13] held on July, 1997. Although you were not present at
 [14] this meeting, there is a report that a decision was
 [15] made to discuss a proposed increase of eight percent
 [16] with the Division of Motor Carriers at the time when a
 [17] particular supplement was being filed. Am I correct
 [18] in understanding that that discussion was had and that
 [19] that's what you just testified about?

[20] A: Yes.

[21] Q: Is it customary for discussions to be had
 [22] with you regarding collectively set rates before they
 [23] were filed by the Kentucky Association?

[24] A: Yes, they did discuss those. And, usually

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[1] informally submitted some justification either
 [2] verbally or communication, something in writing to
 [3] show a need for those increases.

[4] KTC EXHIBIT NO. 67 MARKED

[5] Q: KTC 67 which purports to be the minutes of
 [6] the general membership meeting held on May 10, 1997,
 [7] discloses that you made a presentation to the
 [8] membership of the Kentucky Association at that time.
 [9] Do you believe that to be true?

[10] A: That's correct.

[11] Q: The—withdrawn. Is it true that at that
 [12] time you remarked that as of that time you had been
 [13] attending Kentucky Association meetings and
 [14] conventions for the past twenty-two years?

[15] A: That's what's stated here in the minutes,
 [16] yes.

[17] Q: Do you believe that to be true?

[18] A: Yes.

[19] Q: Did Administrative Specialist of KTC Beverly
 [20] Metcalf also make a presentation at that time?

[21] A: Yes. She handled the administrative sides of
 [22] it.

[23] Q: And, did Louis Amato, Hearing Officer Louis
 [24] Amato make a presentation at that time?

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[1] A: That's what the minutes reflect, yes.

[2] Q: Do you recall there being any discussion with
 [3] you regarding a five percent increase across the board
 [4] in the Kentucky Association tariff in or around July
 [5] of 1996?

[6] A: I don't recall from memory, no.

[7] KTC EXHIBIT NO. 60 MARKED

[8] Q: Referring to KT—which has been marked as KTC
 [9] 60, which purports to be the minutes of the general
 [10] membership meeting of the Kentucky Association held on
 [11] April 13, 1996. I note the minutes reflects that you
 [12] made a presentation to the membership of the Kentucky
 [13] Association at that time, is that true?

[14] A: Yes, that's what it reflects.

[15] Q: Did you make a presentation regarding the
 [16] International Fuel Tax Association provisions at that
 [17] time?

[18] A: Yes. That would have been after we had
 [19] become a part of the international fuel tax reporting
 [20] system. I gave a presentation on just generally what
 [21] it was and how it changed their tax structures.

[22] Q: Did Hearing Officer Amato also report on the
 [23] ICC Termination Act of 1995 at that time?

[24] A: That's what is reflected, yes.

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[1] MR. McMAHON: Off the record, please.
 [2] OFF THE RECORD

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[4]

CERTIFICATION OF REPORTER

DOCKET/FILE NUMBER: 9309

CASE TITLE: Kentucky Household Goods

HEARING DATE: November 13, 2003

I HEREBY CERTIFY that the transcript
contained herein is a full and accurate transcript
of the notes taken by me at the hearing in the
above styled cause of action before the Federal
Trade Commission to the best of my knowledge and
belief.

DATED: November 17, 2003

Melody L. Curtis

Court Reporter

CERTIFICATION OF PROOFREADER

I hereby certify that I proofread the
transcript for accuracy in content, spelling,
punctuation and format.

Juanita M. Toole

Page 136

In The Matter Of:

KENTUCKY HOUSEHOLD GOODS CARRIERS ASSOC., INC
MATTER NO. D09309

WILLIAM DEBORD

Vol. 2, November 14, 2003

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[1] Q: And, you also conduct seminars, is that
[2] correct?

[3] A: I have. That's not an ongoing thing. But,
[4] we have conducted training. The Cabinet does a lot of
[5] training to the trucking industry. And, I've
[6] spearheaded that relative to the household goods
[7] industry. So, yes, we do do training.

[8] Q: And, over, like, say, the last three years,
[9] let's say, could you give an estimate of how much of
[10] your time has been spent preparing for and conducting
[11] seminars?

[12] A: Not a great deal. Most of my time was
[13] copying and putting together this handout that was
[14] circulated into the evidence. But, the seminars that
[15] are conducted are very informal and I would say very
[16] little preparation was involved. After working thirty
[17] years with something, you know, it kind of comes
[18] natural, unfortunately, maybe too natural.

[19] Q: And, these were held throughout the state?

[20] A: Yes. Regionally. Tried to be centralized.

[21] I don't think we did any in far eastern Kentucky,
[22] because of the—we did not get a lot of—movers are
[23] pretty sparse in that area. And, we didn't get a lot
[24] of promise to attend type of response. Most of them

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[1] was in the Louisville, Lexington, Bowling Green,
[2] Northern Kentucky. I think we had three in
[3] Louisville, two in Lexington. The one in Lexington,
[4] by the way, was on—I testified earlier about some
[5] uncertainty, but now I remember when that one was
[6] held, it was on 9-11. And, then we rescheduled that
[7] because of just the emotion of that event. A couple
[8] in Bowling Green. Again, I'm just speaking from
[9] memory. But, I think those have been submitted as—
[10] there's copies of that information available, if it's
[11] not been submitted.

[12] Q: And, your—would your 100 hours have included
[13] your travel to and from these seminars?

[14] A: Yes.

[15] Q: You also, according to KTC 97, and I believe
[16] you mentioned this yesterday, you also worked on
[17] updating powers of attorney documents?

[18] A: Most of that was a one time effort. It's not
[19] an ongoing process, but there was time spent bringing
[20] those up to date.

[21] Q: And, you also investigate illegal movers, is
[22] that correct?

[23] A: That's correct.

[24] Q: And, I'm not sure we defined that term on the

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[1] record yesterday. What is a—what does that term mean
[2] to you, illegal mover?

[3] A: Illegal movers, in my terms, would be an
[4] unauthorized carrier that is operating outside of any
[5] regulations, whether it be safety or administrative
[6] and charging the public rates that are unapproved and
[7] whatever they want to be.

[8] Q: So, they're somebody who would not have filed
[9] the proper documentation with the state, is that
[10] correct?

[11] A: That's correct.

[12] Q: And, according to KTC 97, you also do review
[13] of situs. And, you've used that term, but perhaps we
[14] should get you to define that for the record. What
[15] does review of situs mean?

[16] A: Again, let me restate, I have no idea who
[17] prepared this. Maybe it has nothing to do with your
[18] question. But, situs is where the company is actually
[19] located. That's not something that changes every day.
[20] I would spend very little time checking situs. I
[21] would glance over a filing to make sure if a carrier
[22] was attempting to move their situs illegally, but
[23] other than that, I would—very little time would be
[24] spent on determining situs, because that's fixed,

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[1] that's only changed by official order of the Cabinet.
[2] So, we have had some specific activities of correcting
[3] files, correcting the tariffs. There were some issues
[4] that we had with the Association, the Kentucky
[5] Household Movers Association, of just some situs
[6] locations one time. That was just one effort, it was
[7] not an ongoing thing.

[8] MR. ABRAHAMSEN: Let's take a break.

RECESS

[9] Q: So, what—you've stated on the record that
[10] you don't know precisely what 97 is, do you have any
[11] idea what it could be?

[12] A: Well, based upon the names listed, and I
[13] recall the four or five of us being at the Annual
[14] Conference of the Movers Association, and it looks
[15] like someone's notes upon what they're going to say or
[16] what we're supposed to do—whose part, whose role in
[17] the presentation and some of the things we're going to
[18] discuss.

[19] Q: And, who, in your estimation probably
[20] prepared the notes?

[21] A: Probably Rick Taylor.

[22] MR. McMAHON: Counsel, I'm reluctant to interrupt
[23] you, but could we just have the record reflect that

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[1] Dennis Tolson, the President of the Kentucky Household
[2] Goods Carriers Association has joined the proceedings
[3] as an observer. Thank you.

[4] A: And, the only reason I speculate it's Rick,
[5] because Denise normally handwrites her notes in that
[6] regard.

[7] Q: And, Rick Taylor was the Director at that
[8] time, the Director of Division of Motor Carriers?
[9] A: He was the Director at some time. Again, we
[10] haven't established when this document was issued.
[11] But, at that time I wouldn't be able to say. But, if
[12] I'm correct in my assumption, yes, he would be
[13] director at that time.

[14] Q: Who do you report to at KTC presently?

[15] A: Denise King.

[16] Q: And, her title?

[17] A: Director, Division of Motor Carriers.

[18] Q: And, who reports to you?

[19] A: No one. Officially, no one.

[20] Q: And, with regard to household goods matters,
[21] I'll use as an example a proposal of supplement that
[22] is making some changes in the rates, let's say, of the
[23] household—the Kentucky Association's tariff, do you—
[24] is it within your authority to review that on—or do

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[1] you need to—do you get any kind of guidance from
[2] above or how does that work? How does your
[3] interaction work?

[4] A: I do not get any guidance as to tariff
[5] matters. I do get assignments. Ms. King gets
[6] complaints on rate matters and tariff matters and
[7] other issues and she gives me assignments. But,
[8] relative to rates and tariff matters, I've not had to
[9] report to anyone in that regard since probably
[10] December of '79.

[11] Q: Do you know what the Transportation
[12] Department's budget is?

[13] A: No, sir.

[14] Q: Do you know approximately how much it is?

[15] A: No, sir.

[16] Q: Do you know what the budget is for the
[17] Division of Motor Carriers?

[18] A: No, sir.

[19] Q: Do you know approximately how much state
[20] revenue is expended on the regulatory function that
[21] the state carries out with regard to household goods
[22] matters?

[23] A: No, sir.

[24] Q: Can you estimate that?

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[1] A: No, sir.

[2] Q: Is the—at present time, aside from the
[3] administrative person who you identified on the record
[4] yesterday and yourself, is there anyone else at KTC
[5] who works on household goods matters?

[6] A: Yes. We have—as I stated, we have legal
[7] personnel that processes applications, I think there's
[8] three or four of those attorneys—excuse me, three or
[9] four staff, I think two of them are attorneys. We
[10] have a Commissioner that has authority over those
[11] rules and orders. They actually process and sign
[12] operating authorities. We have a large staff of
[13] Division of Motor Vehicle Enforcement that part of
[14] their jobs are enforcing motor carrier law and the
[15] household goods falls under that, both safety and
[16] administrative.

[17] Q: What would be an example of tasks that they
[18] would do?

[19] A: Well, they stop the vehicles, inspect
[20] carriers for federal safety rules, state safety, state
[21] compliance. They do, historically, have done
[22] enforcement of illegal operations, either authority or
[23] improper registration. There's a whole gamut of
[24] trucking rules that household goods folks have to

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[1] comply with as well.

[2] Q: And, I may have interrupted your answer, were
[3] there other state employees that have duties regarding
[4] household goods movers?

[5] A: Well, I don't know exact number, there's
[6] staff in the Division of Motor Carriers, I do know
[7] there's one full-time person. There's a couple people
[8] that back that individual up. They have a supervisor.
[9] I don't know how much time that he spends on it, he
[10] has a Branch Manager, I don't know how much time she
[11] spends on that. I would just have to speculate. I
[12] identify those—those are staff people that have
[13] responsibilities.

[14] Q: With regard to matters involving household
[15] goods carriers' rates, as they are contained in the
[16] various tariffs, is there anyone at KTC, other than
[17] yourself, who's involved in that?

[18] A: We have one staff person that is presently
[19] being trained and she—her extent at this stage is,
[20] she knows they have to have tariffs and she knows what
[21] a tariff is and what one looks like. But, as far as
[22] that, she's—it's been the Cabinet's desire to have a
[23] full-time person assigned to this. And, part of my
[24] function now is to start sharing that information with

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[1] someone else.

[2] Q: And, is that the extent—is there anyone
[3] else?

[4] A: I wouldn't be able to go any deeper than
[5] that, just based on my own knowledge of the Division.
[6] I'm not involved in the management activities, so I
[7] don't know what some of their job duties are.

[8] Q: I'm just trying to make sure we have a clean
[9] record on this issue on who does the reviews.

[10] A: Okay.

[11] Q: I think the record is clear, but—

[12] A: Okay.

[13] Q: —I'm trying to make it crystal clear when it
[14] comes to reviewing rates. To your knowledge, you're
[15] training one person and you're involved, to your
[16] knowledge, there's no one else involved.

[17] A: That's correct. There's no one else involved
[18] and has not been since, as I said, December of '79—
[19] excuse me, December of '72 probably.

[20] Q: Although just so the record isn't left
[21] ambiguous on this, I believe, if I recall, but correct
[22] me, if I'm wrong, that you said that in the past there
[23] was certain filings made, financial filings, annual
[24] reports—

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[1] A: That's correct.

[2] Q: —that were made and someone was spending a
[3] great deal of time copying them and—is that correct?

[4] A: That's correct.

[5] Q: And, that—but that practice has been
[6] discontinued so—

[7] A: The statutes were changed to cease making an
[8] annual mandatory report and it's a report that we can
[9] request at any time for any period of time.

OFF THE RECORD

[10] Q: Let me show you KTC 1. And, for the record,
[11] I believe this was also used yesterday and was marked
[12] KTC 14. But, this—for the record, this is Kentucky
[13] Statute 281.590 and we spoke about this a little bit
[14] yesterday. And, this is the declaration of policy, is
[15] it not?

[16] A: That's correct. That's the title of that
[17] statute, correct.

[18] Q: And, it notes that it's the policy of the
[19] Commonwealth to provide for the regulation of all
[20] transportation subject to this chapter and to promote
[21] safe and adequate and economical and efficient
[22] service. When the statute uses the term economical
[23] and efficient service, in your view, does that clause

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[1] apply to the interest of shippers?

[2] A: I would think it would include the shippers
[3] as part of the public, yes.

[4] Q: And, I'm going to show you what we've marked
[5] previously as KTC 2 and ask you to take a look at
[6] that, specifically on 716, the second—third to last
[7] page. This is statute 281.680. I'm going to ask you
[8] about sub-section (4), and I apologize if we went over
[9] some of this yesterday, I'm just trying to make the
[10] record clear in my memory about limitations. So, if
[11] you looked at some of these yesterday and were asked
[12] some of these questions, I apologize. The sub-section
[13] (4) suggests—states that the rates should be—the
[14] procedures for the rates should be such that they
[15] assure that respective revenues and costs of carriers
[16] engaged in transportation of a particular commodity
[17] for which rates are prescribed, are ascertained. Do
[18] you understand that statute to be primarily aimed at
[19] protecting the interests of the carriers?

[20] A: I think it would include the carriers. But,
[21] I think the public would be affected, if such revenues
[22] were not at a level to where the carrier could provide
[23] adequate and reasonable service. I think it would
[24] include both the carrier and the public, indirectly,

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[1] most certainly.

[2] Q: And, on 718, I'm going to—this is Bates 718
[3] of KTC 2, it's Kentucky Statute 281.690. The—I'm
[4] looking at sub-section 2 and it states that if there
[5] were a hearing held, then the—if the state found that
[6] the rates were unjust, unreasonable or unjustly
[7] discriminatory, then the Department would fix just and
[8] reasonable rates, is that correct?

[9] A: Yes. After a hearing, if those rates that
[10] have been published, have been found to be unjust,
[11] unreasonable and discriminatory, then the burden is on
[12] the Cabinet to prescribe those rates.

[13] Q: Prescribe rates that are just and reasonable?

[14] A: Correct.

[15] Q: And, when the statute speaks in terms of just
[16] and reasonable rates, is—do you understand that to be
[17] a requirement that the rates be just and reasonable
[18] from the standpoint of the shipper or the carrier or
[19] both?

[20] A: Both.

[21] Q: To your way of thinking, does any statute
[22] require you to determine that rates are just and
[23] reasonable?

[24] A: To my knowledge, the only statute that would

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[1] require us to make that official determination, is if
[2] someone protested either a new application or an
[3] existing rate, then the law requires us to hold a
[4] public hearing, and issue an order.

[5] Q: Just so I make sure I understand your answer.
[6] If—let's say the Kentucky Association files a rate
[7] and there's no protest, is there any requirement under
[8] the law that you determine that those rates are just
[9] and reasonable?

[10] A: Again, only if someone protested that
[11] application. And, you said it was unprotested. If it
[12] was an unprotested, then the only time we would have a
[13] hearing is if we felt, after our review of the matter,
[14] that they were unjust, then the statutes allows us to
[15] hold a public hearing. I know that's probably the
[16] same answer I've given. But, I don't know how to—
[17] maybe I'm not following your question correctly.

[18] Q: Well, it's no doubt the problem with the
[19] question, I assure you, I'm having trouble forming it.
[20] But, in your experience, reviewing these statutes, is
[21] the—is there an obligation on your part, in the
[22] absence of a protest, to determine that rates are just
[23] and reasonable?

[24] A: Yes. I think the statutes require us to

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[1] review those. And, if I didn't properly review those
[2] and follow the statutes and the rules, then it would
[3] be improper in the eyes of our rules and regulations.
[4] So, it does mandate a review and—both on our part as
[5] well as the applicants, it's their responsibility to
[6] make sure the public interest is protected. And,
[7] carriers are public, by the way. So, I think that's
[8] why, when I speak of carriers and public, they're
[9] actually the same, in my opinion.

[10] Q: Let me ask you about KTC 24. Let me ask you
[11] what was marked yesterday as KTC 24. It is State Code
[12] Provision 281.695, and I'm going to ask you about
[13] sub-section (1). Here it's speaking about, if the
[14] Department, after it held a hearing, finds any
[15] existing rate to be excessive. When the statute uses
[16] the term excessive, is that a term that is meant to
[17] apply to the shipper?

[18] A: Versus—yes, it would apply to the shipper as
[19] well as any public person or entity it was affected by
[20] it.

[21] Q: And, is that also true of the other terms in
[22] here, inadequate? What does inadequate mean, in your
[23] opinion, as the statute—as it's used in the statute?

[24] A: In my opinion, again, I'm not an attorney,

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[1] I'm not responsible for interpreting the law. But,
[2] inadequate to me, is where the rate level would be
[3] insufficient to fund an economic sound company. And,
[4] historically, in other matters, folks and carriers
[5] have cut rates in order to get business and then would
[6] be inadequate to sustain an economic sound company and
[7] it would just result in problems for the public.

[8] Q: And, in your view, what does the statute mean
[9] by unreasonable?

[10] A: Again, I don't know the intent of the
[11] legislation. In my opinion, the word unreasonable
[12] would be something outside the norm, something that's
[13] imposing an issue on somebody that was not reasonable
[14] to the common person's mind.

[15] Q: And, would that include unreasonable to—from
[16] the standpoint of the shipper?

[17] A: It would include the shippers, yes, as well
[18] as any other affected party.

[19] Q: Do you have any written guidelines that you
[20] use to determine whether rates meet the statutory
[21] criteria we've just covered?

[22] A: When you refer to written guidelines, are you
[23] saying specifically rules and statutes of the
[24] Commonwealth?

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[1] Q: Well, just in terms of analyzing the level of
[2] the rates to see whether they're unreasonable, for
[3] example, do you have any written guidelines that you
[4] use?

[5] A: I mean, I use a lot of information to make
[6] that determination and most of them are in a written
[7] form as well as verbal knowledge. But, yes, I—
[8] there's all types of information in the public that
[9] provides analysts with information on how to base
[10] their decisions. But, specifically there's not a
[11] written rule within the Cabinet that requires certain
[12] specific standards to be followed.

[13] Q: I know we talked yesterday about another part
[14] of the statute, which, if you recall it, I won't go
[15] through the joint effort of placing it in front of you
[16] again. But, I think we talked about a statute
[17] yesterday that says that, in my own interpretation of
[18] it, that the carriers have to charge the rates in the
[19] tariff, they're not allowed to discount.

[20] A: That's correct.

[21] Q: And—

[22] A: I think that's a regulation, not a statute.
[23] But, it's—well, maybe—I think it's both. Excuse me.
[24] I think it's both, both statute and regulation and

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[1] they cannot discount. They have to charge the
[2] published rates.

[3] Q: I believe it's right in front of you. On
[4] bates 717 of KTC 2, I believe it's sub-section (2).
[5] A: Sub-section (2) deals with contract carriers,
[6] that's not household. But, sub-section (1) does say
[7] that the rates collected or received are no less or
[8] different than the rates published in the tariff.
[9] And, that implies that discounts is prohibited. It
[10] says discounts are not allowed to be published in a
[11] tariff. But, we also have a specific reg that states
[12] that discounts are prohibited. I think that's in the
[13] household goods regulation, I don't know the—690, I
[14] believe it is.

[15] Q: And, that's one of your areas of enforcement
[16] activity, is it not? You—part of your responsibility
[17] is to make sure that the carriers adhere to the rates
[18] and do not offer the shippers discounts, is that
[19] correct?

[20] A: That's correct.

OFF THE RECORD

KTC EXHIBIT NO. 98 MARKED

[1] Q: I've handed you a document that we've
[2] identified as KTC 98. It's actually—although it

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[3] bears a staple binding together several pages, I
[4] believe it's actually a compilation of probably
[5] several different documents. And, I think basically
[6] the documents are in reverse chronological order. So,
[7] there appears to be a letter, for instance, of KTC
[8] 1275 bearing the date of March 30th, 2001, and 1274 is
[9] dated April 6th, 2001 and then the first page of the
[10] document, 1267 is dated April 24th, 2001. Would that,
[11] as an introduction, I'm just going to ask you, Mr.
[12] Debord, to explain, if you could, what the document
[13] is—this was taken—this was one of the documents
[14] provided from the files of the State of Kentucky.
[15] Maybe you could start with the document that bears the
[16] March 30th date and explain, for the record, your
[17] understanding of this—what's going on here.

[18] A: Well, the letter of March 30, 2001, is a
[19] letter to the Executive Director Bill Lally, Kentucky
[20] Household Goods Carriers Association from one of their
[21] members, A. Arnold, bringing a—I'll use the term, a
[22] rate complaint to their attention, that one of their
[23] other members is charging some different rates than
[24] they should be. The letter speaks for itself, I mean,
[25] I can read it.

[26] Q: No. No. No. That's fine. I just—you've

[1] identified it as A. Arnold being a member of the
[2] Tariff Committee—I mean, a member of the tariff.
[3] And, the—how would something like this, in your
[4] experience, come to the attention—how would it come
[5] to A. Arnold's attention that Shetler Moving was
[6] providing or attempting to provide a discount to a
[7] shipper?

[8] A: Well, there's different ways it would come to
[9] our attention. Historically, it's been my opinion
[10] that most of that information comes from their sales
[11] staff or through—they'll offer an estimate to someone
[12] and, you know, they'll call two or three movers to get
[13] an estimate, either through the Yellow Pages or
[14] personal knowledge and they'll get a quote and then if
[15] they—in the process of getting a quote, someone says,
[16] well, we can discount—this is what the tariff says,
[17] but we could discount it by fifty percent, if I want
[18] to do this, that or the other and then that runs up a
[19] red flag and the shipper calls the other carrier back
[20] and says, hey, you give me an estimate of this tariff
[21] rate and I go to some other person and they give me a
[22] fifty percent discount, why can't you do the same.

[23] So—

[24] Q: So, the customers—the shipper is maybe

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[1] shopping around a bit or something like that?

[2] A: In my opinion, yes.

[3] Q: And, then on KTC 1274, there's a letter to
[4] Rick Taylor, who is identified as a KTC—Director—
[5] he's the Director of the Division of Motor Carriers.
[6] He's forwarding Mr. Lally from the Kentucky
[7] Association, is forwarding the letter to state
[8] officials, is that correct?

[9] A: That's what it appears to be, yes.

[10] Q: And, then you—what appears at KTC 1267 is—
[11] and correct me, if I'm wrong, but your—you then send
[12] a letter to the shipper Shetler—

[13] A: Uh-huh. (Yes)

[14] Q: —advising them that they—that they have
[15] engaged in a violation, is that correct?

[16] A: I—

[17] MR. McMAHON: Object to the form of the question.

[18] A: Let me—if I may, let me share with you that
[19] this particular mover had been audited by me and it
[20] was just a routine audit. Again, I may not get the
[21] time frame of this correct, bear with me, but I do
[22] recall the audit. And, during that audit, I found
[23] they were charging discounts—allowing discounts and
[24] binding estimates or that they were incorrectly—they

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[1] were correctly rating their bills according to their
[2] tariff, as I recall, but on the bottom of those
[3] freight bills, they were discounting all the rates. I
[4] almost feel this letter is a response to that audit in
[5] lieu of the complaint or maybe in addition to the
[6] complaint.

[7] Q: Thank you for clarifying that. That's—but
[8] your recollection is that the audit—you had done an
[9] audit, even before seeing the complaint?

[10] A: Again, the time frame is from memory. But, I
[11] do remember finding that discrepancy during an audit.
[12] And, of course, we've also received a complaint. It
[13] doesn't say when I performed the audit, unfortunately
[14] or maybe it does. Since those freight bills—if I
[15] might just clarify this document. On the second page
[16] of that, KTC 1268—

[17] Q: Yes.

[18] A: —and 69, those are just some notes that I
[19] wrote from the bills of lading and freight bills. On
[20] the first one there, I'm having trouble reading my
[21] writing, that was a local move, it looks like. The
[22] next one, on the bottom, they gave an estimate that
[23] was different than the actual charges. On the page—
[24] on 1269 they discounted it to give a fifteen percent

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[1] discount. And, those bills were all rated, August and
[2] September of 2000. But, the letter was only—the
[3] letter was written in April. So, I think—it would
[4] not be customary for me or normal business to wait
[5] that long to advise a carrier of a discrepancy. So, I
[6] have a problem with the dates there.

[7] Q: I appreciate your struggling through the
[8] timing here. Let me just back away from this document
[9] for a moment then and ask you a question, just in
[10] general. Do you audit carriers—I assume you audit
[11] carriers on a routine basis, just based on you just
[12] select some at random and go audit them, is that
[13] correct?

[14] A: Correct.

[15] Q: Do you also audit them, if you've heard
[16] complaints about that particular carrier?

[17] A: Yes. And, this particular carrier, by
[18] memory, I know we did both, it was a routine as well
[19] as a complaint.

[20] MR. ABRAHAMSEN: Let's go off the record.

OFF THE RECORD

[22] KTC EXHIBIT NO. 99 MARKED

[23] Q: I've showed you what we've marked as KTC 99.

[24] MR. McMAHON: Which is—which one is 99?

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[1] MR. ABRAHAMSEN: The one that has the handwriting
[2] on the front.

[3] Q: I was actually looking at several pages in on
[4] Bates 475. And, my only question is, you know, am I
[5] correct that this is another instance where there is
[6] a—well, let me ask the question differently. I will
[7] withdraw that question. Who is Don Cole, do you know?

[8] A: He is affiliated with Doug Bradford,
[9] Incorporated in Bowling Green. I don't know if he's
[10] the owner or the officer.

[11] Q: Okay.

[12] A: I don't think he's still there, I don't know
[13] for certain.

[14] Q: And, that's a mover?

[15] A: Yes, sir.

[16] Q: And, what's your understanding of what's
[17] transpiring in these last—on this page 475?

[18] A: It looks like that he has sent Mr. Lally, the
[19] Executive Director of the Kentucky Household Goods
[20] Carriers Association, a complaint on illegal movers.

[21] Q: And, by illegal, what do you mean?

[22] A: Either he does not have authority or he's
[23] charging a rate that's not in conformity with the
[24] tariff.

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[1] Q: And, what—if you can tell, what is Bates
[2] 476?

[3] A: It looks like some type of an estimate that
[4] Berger Transfer and Storage out of Louisville has
[5] given to some shipper. And, other than that, I don't
[6] know—

[7] Q: Do you know if—

[8] A: It looks like some type of a standard
[9] estimate form that Berger uses.

[10] Q: And, is Berger a member of the Kentucky
[11] Association tariff?

[12] A: Yes.

[13] Q: And, do you know how or why this document
[14] came into the state's possession?

[15] A: Again, I don't know from what you've handed
[16] me, if this is a state—I am aware of this carrier and
[17] a complaint that was filed against this carrier. If I
[18] may just offer my opinion here, it looks like there's
[19] more than one complaint merged together. But, I do
[20] recall Berger—also Berger through my investigation
[21] routinely and also to follow up on a complaint. This
[22] carrier was discounting and offering binding estimates
[23] as well and other improper tariff violations.

[24] KTC EXHIBIT NO. 100 MARKED

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[1] Q: Let me ask you to please refer to KTC 100,
 [2] specifically, the document—and again, they're stapled
 [3] together. That's how the copies were made in our
 [4] office, presumably because they were stapled together
 [5] when they came to our office, but I can't even
 [6] represent that for sure, we farm this out to somebody,
 [7] I did not do the copying myself.

[8] A: That's why I cited, I did not do the copying,
 [9] as I've already testified, I did not do the copying,
 [10] but I did review them, but I didn't review them to the
 [11] extent that Page 2 should have been behind Page 3 or
 [12] whatever. I—

[13] Q: Yeah. And, I just want you to make sure that
 [14] when I hand you something stapled, it doesn't—it's no
 [15] more than that, it's just a staple that got there and
 [16] I don't want to mislead you in any way.

[17] A: Thank you.

[18] Q: But, I do want you to look at KTC 1258. And,
 [19] again, this is a document that we've got from the
 [20] state, you know, the state provided us and ask you if
 [21] you could identify it?

[22] A: Yes. It's a—it's one of the documents we
 [23] received from Mr. Lally. And, I might say, that is—
 [24] if I could interject this here, it is our procedure

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[1] to—based upon an agreement, an informal agreement
 [2] with the Association, that they funnel complaints from
 [3] their members through their Executive Director. And,
 [4] that's why you would see the letter from, in this
 [5] case, someone at Peters and Mr. Lally advising of some
 [6] allegations and asking him to follow up and he would
 [7] follow up with us. That way, we are informed as well
 [8] as the staff at the Association the activity with
 [9] their own members. In this particular case, the
 [10] allegation that a thirty percent discount was being
 [11] illegally given.

[12] Q: And, is the document 1259, was that likely
 [13] attached to 1258, when it was sent to the state?

[14] A: I would be speculating, but it's the same
 [15] company that 15—excuse me, 1259 does have the
 [16] notation of the thirty percent discount. So, I would
 [17] assume that is an accompanying document, yes.

[18] Q: You may have already stated this, but did you
 [19] subsequently do a compliance audit on Peters Movers
 [20] and Storage?

[21] A: I've done a routine investigation on Peters,
 [22] but not a complaint audit.

[23] MR. McMAHON: Counsel, I apologize for
 [24] interrupting. I just want to make sure that the

[1] record would reflect the presence of Kentucky
 [2] Transportation Cabinet Deputy General Counsel Todd
 [3] Shipp at this time. Thank you.

[4] MR. ABRAHAMSEN: Thank you.

[5] Q: So, you don't always do a compliance audit,
 [6] if you get a complaint forwarded to you from the
 [7] Kentucky Association?

[8] A: Would you repeat that, please?

[9] Q: So, you don't always do a compliance audit,
 [10] if you get a complaint forwarded to you from the
 [11] Kentucky Association?

[12] A: Well, I stated, I do two types of audits.

[13] One is routine. The second are those that have
 [14] complaints filed. And, if I go to their business, I
 [15] would not just look at this particular shipper, for
 [16] example, I would do a random audit. But, normally
 [17] what I would ask for, if I didn't find it, would be a
 [18] file on this particular carrier and then inform them
 [19] that—of what I had and then give them the opportunity
 [20] to defend that—their position at that time. So, I
 [21] don't—it's difficult for me to separate one from the
 [22] other. But, there—but I have stated, that there are
 [23] two types of audits that I do do.

[24] Q: But, you don't always act on a complaint

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[1] that's forwarded to you from the Association?
 [2] A: I don't recall cases where I've not acted. I
 [3] may not have—I may not go to the company, I may not
 [4] make a travel visit, as you've used. I might pick up
 [5] the phone. It depends on what the complaint is. I
 [6] usually try to let people be innocent until proven
 [7] guilty. So, I usually give them the benefit of some
 [8] defense and sometimes that is over the phone.

[9] Q: And, what defense do they usually use?

[10] MR. McMAHON: Object to the form of the question.

[11] A: The defense would be, many cases, the
 [12] salesman does so much interstate work that they
 [13] routinely get messed up trying to enforce Kentucky's
 [14] tariff. It would be difficult for me to give you a
 [15] good defense. I don't know that I'd want to do that.
 [16] But, those are some of the things that the complaining
 [17] party does share with me, yes.

[18] Q: To your knowledge, have there ever been any
 [19] state court actions involving household goods mover's
 [20] rates? And, by that, I mean, a challenge to the
 [21] state's regulatory authority or actions?

[22] A: I'm not aware of any court actions against—
 [23] in this case it would be the Franklin Circuit Court,
 [24] that has—I don't know of any cases where that court

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[1] has challenged any of our statutes or regulations.
 [2] There's been administrative hearings over the years
 [3] that are scheduled to obtain evidence where rates are
 [4] unjust, unreasonable and discriminatory, but I don't
 [5] know of any court action.
 [6] Q: To your knowledge, could—would the court
 [7] have jurisdiction to hear such action?
 [8] A: Yes, and they have heard such actions, not
 [9] relative to household goods. But, as I testified
 [10] yesterday, the Purolator Courier Corporation where—
 [11] well, actually, it did affect the household goods
 [12] rates, because, as I shared yesterday in testimony,
 [13] that ruling was encouraged by the Cabinet in order for
 [14] us to accommodate some provisions in the household
 [15] goods tariff to let them charge extra for high value
 [16] shipments. So, in regard, that was a court case that
 [17] actually reversed the Cabinet's decision. So, I won't
 [18] interpret that as a court action finding it improper.
 [19] I will state that that court proceeding did overrule
 [20] the administrative order of this Cabinet and allowed
 [21] the carrier to publish these rates. And, I do recall
 [22] one other case where—I don't know if it was a court
 [23] overruling this position, but there was a mover that
 [24] was, through a public hearing, had his authority

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[1] suspended for violating the rules and regulations in
 [2] his tariff, and that matter was set aside by the
 [3] court, stating that the action taken by the Cabinet
 [4] was too harsh. And, I think the Franklin Circuit
 [5] Court remanded that the authority be reinstated
 [6] because the thirty day suspension was too severe for
 [7] the offense of the tariff violation. So, I guess I
 [8] need to change my answer just a little bit there.
 [9] Q: No. I appreciate you clarifying the record.
 [10] And, feel free to do that as you go through—
 [11] A: Thank you.
 [12] Q: —if you remember something, let us know.
 [13] A: Okay.
 [14] Q: Let me ask you—do you have KTC 2 in front of
 [15] you?
 [16] A: Yes. And, you gave me the ability to
 [17] interject something, so let me do that now. As I
 [18] stated off the record, this is documents that I
 [19] compiled for a training seminar. And, I deleted some
 [20] legal references on some of them. I made it more user
 [21] friendly. So, these may or may not be—I think in
 [22] most cases they are the exact copies of the statutes,
 [23] but it every well could be that these are not accurate
 [24] copies or copies that may not contain all of the

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[1] verbiage in the statutes. But, those that were only
 [2] pertinent to this training seminar that we put on.
 [3] But, I do have KTC document No. 2.
 [4] Q: Okay. The—I'd like you to turn to 0706.
 [5] A: Okay.
 [6] Q: And, the—this is the regulation 1:050, rates
 [7] and fares. Am I correct in my reading, that sub-
 [8] section (3) about halfway down the page, it's in
 [9] parenthesis, I think it's a sub-section, when it talks
 [10] about—it's a requirement that certain carriers submit
 [11] certain documents, as I read it. And, am I correct
 [12] that it only applies to common carriers of persons?
 [13] A: That's correct.
 [14] Q: And, so, when it talks about income
 [15] statements in sub-section (c) and balance sheets and
 [16] income statements in sub-section (d) those are
 [17] documents that are required under this regulation for
 [18] common carriers of persons, is that correct?
 [19] A: That's correct.
 [20] Q: Are—and I believe you testified earlier that
 [21] there aren't comparable statements filed with KTC from
 [22] household goods movers, is that correct?
 [23] A: I don't believe I testified to that. You're
 [24] saying that there's no such thing as that that they've

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[1] filed. I think section (2) up there makes a
 [2] requirement that deals with common carrier rates.
 [3] Q: There is no requirement that all of them
 [4] file, is that correct?
 [5] MR. McMAHON: Object to the form of the question.
 [6] I don't understand.
 [7] Q: Let me see if I can simplify it.
 [8] A: I'm not agreeing with you, if that's what
 [9] you're asking.
 [10] Q: Let me just back up. Is there a requirement
 [11] that all household goods movers file income statements
 [12] with the State of Kentucky?
 [13] A: I don't know that it's a requirement. I do
 [14] know that part of their applications, we—if we
 [15] desire, we can request it. We have the ability to
 [16] request any information that we feel pertinent. So,
 [17] we have a very blanket authority to request whatever
 [18] we wish to request. Whether a specific statute naming
 [19] certain documents, without some in depth review, I
 [20] don't know—I don't know that right off the top of my
 [21] head.
 [22] Q: Do household goods carriers in Kentucky
 [23] routinely submit income statements to the State of
 [24] Kentucky?

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[1] A: Not routinely, no.
[2] Q: Do household goods carriers routinely submit
[3] balance sheets to the State of Kentucky?
[4] A: No, they do not.
[5] Q: The section (1), which also appears on 0706,
[6] I believe we went over this yesterday, I just want to
[7] make sure the record is clear. It's called
[8] establishment of initial rates and fares. And, it
[9] speaks in the, I believe it's the second sentence of
[10] the regulation, it's speaking—it uses the phrase such
[11] tariffs. Which, if I'm reading this correctly, such
[12] tariffs is referring to a newly authorized carrier.
[13] And, it says such carrier—such tariff shall be
[14] accompanied by a statement showing how the rates,
[15] fares and charges were determined. Am I reading this
[16] correctly so far?

[1] A: I would disagree with you in your reference
[2] to who that applies to. I would disagree that that's
[3] not a new—not necessarily a new carrier, but a
[4] carrier, new or existing, that establishes a rate for
[5] the first time. The purpose of that statute is to
[6] eliminate the thirty day notice on new applicants.
[7] But, I think it would have application to anyone that
[8] files an initial rate.

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[1] Q: And, I believe you testified yesterday that
[2] if a carrier is establishing a rate for the first time
[3] as part of the Kentucky Association tariff, these
[4] statements are not submitted to KTC, is that correct?

[5] A: I don't recall testifying to that. But, they
[6] usually provide information and, either verbally or in
[7] writing or through discussions, supplemental
[8] information, along with—I believe they do on all of
[9] their tariff—yes, they do on all of their tariff
[10] filings. They provide some type of instructions on
[11] what it is and it's either through a tariff bulletin
[12] or a notice to their members. They have their own
[13] procedures that they go through. It's a couple of
[14] documents that are transmitted to their membership, I
[15] think, before we even—it's even officially filed with
[16] us.

[17] Q: And, that is the statement referred to in
[18] this particular—

[19] A: That would be part—that would be documents
[20] that they would submit to conform with this
[21] regulation, yes.

[22] Q: So, is there a separate statement that is
[23] filed under this regulation for firms that are not
[24] part of the Kentucky Association?

[1] A: Separate statute or—
[2] Q: A separate statement showing how the rates,
[3] fares and charges were determined.
[4] A: Well, most certainly, anyone that would make
[5] an application, whether it be a member or a non-
[6] member, if they submit a tariff, there's accompanying
[7] documents that come in with those, or if they don't,
[8] we request them.
[9] Q: And, can they—
[10] A: And, I might say, part of my testimony
[11] sometime during this proceeding, you know, those
[12] carriers that are not a member of this Association,
[13] are many times unfamiliar with the procedures. And,
[14] so, when they send in their application for rates and
[15] tariffs for the first time, most of them are not in
[16] compliance. Most of the time they do not send us
[17] information and that's why I was testifying to the
[18] administrative problems that will be added of
[19] individually educating all 115 or 20 certificate
[20] holders of what the rules are versus, you know, two or
[21] three—two or three individuals, I should say.
[22] Q: Uh-huh. (Yes) To your knowledge, would the
[23] state have the authority to have a regulation in place
[24] that required household goods carriers to submit on a

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[1] regular ongoing—or say, annual basis, income
[2] statements and balance sheets?
[3] A: You lost me there on your question. Could
[4] you repeat it, please?
[5] Q: Yes. To your knowledge, would the state have
[6] the authority to issue a regulation requiring the
[7] household goods movers file with the state income
[8] statements and balance sheets on an annual basis?
[9] A: Yes, we do have the authority to promulgate
[10] any regulation. There's a process for those
[11] regulations to be acted upon and approved. But, most
[12] certainly, we have the ability to propose regulations
[13] and most all statutes does give the agency the ability
[14] to promulgate regulations. I'm not aware of any that
[15] doesn't. It could not conflict a statute, but you
[16] would have the ability to supplement or clarify a
[17] statute to the form of a regulation.

[18] MR. ABRAHAMSEN: Let's go off the record.

OFF THE RECORD

[19] KTC EXHIBIT NO. 101 MARKED
[20] Q: I've handed you KTC 101. You mentioned in an
[21] earlier answer that the Kentucky Association has a
[22] procedure it goes through when it wants to do a
[23] supplement. And, it's probably not even necessary to
[24] supplement.

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[1] form and mailed on February 5th to all parties in the
[2] tariff. What is that a reference to?

[3] A: It leads me to believe that on that date they
[4] will mail—on February the 5th, to all parties of the
[5] tariff, the document that's going to be filed with the
[6] Cabinet.

[7] Q: This second—

[8] A: And, I just want to interject, I don't
[9] oversee that process on a routine basis. I know how
[10] they operate and do their own administrative notices.
[11] Those are guidelines they've imposed on themselves in
[12] addition to what state laws and regulations would
[13] require. And, that's why I'm a little bit hesitant to
[14] speak exactly about—but, my opinion and my
[15] experience, this is how they normally do things on a
[16] normal routine basis.

[17] Q: The second page of KTC 101 has Bates 0338 and
[18] it's entitled the request for tariff change, it's to
[19] Chairman of the Tariff Committee of the Kentucky
[20] Association and it also is called form 4286. And,
[21] what is the purpose of this particular form, to your
[22] knowledge?

[23] A: To my knowledge, this is a form—this is
[24] their form that—an Association form they use.

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[1] Members have this form as a form to submit their
[2] exceptions and their wishes for—if you're familiar
[3] with a tariff, it is infiltrated with a large number
[4] of exceptions and rules that apply only to a specific
[5] carrier or groups of carriers. So, this is their form
[6] of allowing independent action on their membership's
[7] behalf. And, it is also used for exceptions to
[8] general applications—

[9] Q: And—

[10] A: —in my opinion.

[11] Q: —do you—so, if—to your understanding, a
[12] mover who wanted to file an exception, would fill out
[13] this form and submit it to the chairman of the Tariff
[14] Committee at the Kentucky Association; is that
[15] correct?

[16] A: That's correct.

[17] Q: Now, do those forms then get submitted to you
[18] as well, once they're filled out and filed?

[19] A: I see the forms, but they are not normally
[20] filed with us. I see the forms, they're not required
[21] to be filed with us, it's just for their—it is a
[22] paper trail for—to place responsibility back on the
[23] carrier to make sure that they submit what they want.
[24] And, again, some of these things may come to their

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[1] office verbally, I don't know that. Most of them come
[2] in the form of—this form. But, they use this as a
[3] paper trail to allow their independent action by their
[4] membership.

[5] MR. McMAHON: Go off for a second.

OFF THE RECORD

[6] Q: Let's go back on the record and continue to
[7] try to make a clear record of the steps involved with
[8] documents such as that's shown in KTC 101. If a
[9] mover, to your knowledge, wants to file for an
[10] exception to the proposed tariff, then as I understand
[11] it, that mover would fill out form 4286, an example of
[12] which is at 0338, and would submit that form to the
[13] Chairman of the Tariff Committee of the Kentucky
[14] Association.

[15] A: That's correct.

[16] Q: The Kentucky Association would then actually
[17] be the entity that would file the exception with KTC.

[18] A: That's correct, through a tariff change.

[19] Q: And, the document that is filled out by the
[20] mover, KTC 0338 is an example of that document, that
[21] is submitted to the Chairman of the Tariff Committee,
[22] but is not then submitted to KTC.

[23] A: Not routinely, no. They're not submitted to

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[1] us officially. Many times they do show me during this
[2] discussion process, many times I see these. Some of
[3] them might be so far-fetched that they would seek
[4] advice from me before they officially print them.
[5] And, we have, at this stage, I might interject, at
[6] this stage we have advised the Tariff Committee, no
[7] this would be contrary to law and it would not be
[8] acceptable as a courtesy to them to avoid the
[9] publication cost and mailing cost. And, so, they
[10] would go back to their member or client and say, well,
[11] they're going to have problems with this, this is
[12] contrary to law and these are—I'm sharing examples of
[13] the experience. Then they would go back and either
[14] amend that request—so I have seen these and are aware
[15] of them. Most usually on general rate applications, I
[16] see them when those that want to accept, that want to
[17] not be included in a general matter. But, routinely,
[18] they are not submitted, but I have—I do see them.

[19] Q: You've seen some of them, but not all of
[20] them, is that correct?

[21] A: I would—yes. I'm sure I haven't seen all of
[22] them.

[23] Q: So, there are movers who have filed for
[24] exceptions over the—in the past that have filled out

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[1] a form 4286, submitted it to the Chairman of the
 [2] Tariff Committee of the Kentucky Association and those
 [3] forms have not been reviewed by you, is that correct?
 [4] A: Well, we're speculating. I can't say that's
 [5] actually happened. I'm saying it—due to the volume
 [6] of all of this over the last thirty-five years, I'm
 [7] sure there's some that have not been shared with me,
 [8] I'm sure some have not been reviewed, but routinely,
 [9] all of these are discussed. Although we don't get
 [10] this form, there's a little cover letter that comes
 [11] along with their tariff that details exactly what that
 [12] proposal is. So, although I don't see this form, I
 [13] see the information that they've submitted either
 [14] verbally or in writing.

[15] Q: Have you ever instructed the Kentucky
 [16] Association on what kind of information must be
 [17] contained in 4286?

[18] A: Instructed is a strong word. But, we've
 [19] advised of what they need to do. You know, we've
 [20] advised them on justification procedures. We have
 [21] advised them that or I have, in my opinion, that—as I
 [22] said earlier, that this proposal may not be in
 [23] conformity to Kentucky law. But, as far as
 [24] instructing them to do things based upon this form, I

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[1] don't know that I've instructed them to do things.
 [2] But, most certainly we start a dialogue of
 [3] conversation based upon information on these.

[4] MR. ABRAHAMSEN: Let me take a break.

[5] RECESS

[6] MR. SHIPP LEFT DEPOSITION DURING BREAK

[7] Q: I think the record is clear on this from
 [8] yesterday, but just to make sure we don't have any
 [9] confusion. I want to ask about hearings for rates.
 [10] And, I want to just make sure the record is clear.
 [11] When I'm speaking about the rates contained in the
 [12] Association's tariff, have there been hearings
 [13] conducted to examine or analyze the rates contained in
 [14] that tariff?

[15] A: Well, I have knowledge of one that was
 [16] involved when the rates were established. There was
 [17] a—when household goods was removed from the exempt
 [18] list, and I mean exempt from economic regulation,
 [19] there was a very elaborate hearing process that went
 [20] through—at that time it was the Department of Motor
 [21] Transportation. And, those rates and the processes
 [22] for determining rates, the establishment of the situs,
 [23] the base of operation for the carriers, all the
 [24] various packing rates, third party rates, all of those

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[1] were established and a minimum rate was established.
 [2] And that minimum rate still though has been increased
 [3] due to inflation, that minimum rate still exists in
 [4] the present tariff. I shared with you a couple of
 [5] court cases. But, as far as official public hearings,
 [6] other than that one, I'm not aware of—well, there
 [7] have not been.

[8] Q: And, when was this hearing that you were just
 [9] speaking of?

[10] A: I want to think it was in the mid '60s. I do
 [11] know when the Association's tariff was required to
 [12] publish those minimum rate orders, and they have
 [13] continued to do that. Those are the rates which
 [14] cannot be—they cannot fall below, I think they refer
 [15] to it as section (2)(a) and also some of their local
 [16] rate provisions or sections.

[17] Q: And, how—

[18] A: I guess they done such a good job back then
 [19] establishing those, we didn't need to revisit the
 [20] issue. But, I can't take credit for that, because it
 [21] was few—a couple years before my time.

[22] Q: How did you learn about it?

[23] A: Well, in 1972, when I come to work, that was
 [24] still an ongoing process.

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[1] Q: The hearing was still ongoing?

[2] A: No. The process of—I become familiar with a
 [3] minimum rate and the process for establishing the
 [4] various sections within the Cabinet—in the tariff
 [5] that the Cabinet had approved.

[6] Q: And, are those minimum rates contained in the
 [7] Association tariff?

[8] A: They were contained in the tariff. But, that
 [9] particular section—again, I'm quoting section (2)(a),
 [10] I hope I'm right on that, it's from memory. Those
 [11] have been increased at the approval of the Cabinet. I
 [12] don't know if they're officially titled minimum rates.
 [13] But, by—just by pure publication of them, then those
 [14] are the minimum levels that a participant in that
 [15] Association can charge.

[16] Q: And, are the rates contained in the
 [17] Association—the Kentucky Association tariff, are they
 [18] higher than the minimum rates?

[19] A: Well, a low schedule is the minimum rate.
 [20] They're not higher than the minimum rate, because, as
 [21] I said, due to inflation and approval by the Cabinet,
 [22] through increases of those, that minimum rate has—my
 [23] point was, from '69 or '59 or whenever it was, those
 [24] rates—those minimum rates have been increased.

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[1] They're not still the same rates it was back then, of
[2] course, economically, that would not be sound. But,
[3] the tariff still maintains a schedule for which
[4] carriers cannot charge less. They have options of
[5] going higher, but they can't charge less than in the
[6] scale.

[7] Q: And, when there's a general rate increase of
[8] eight percent, let's say, would the minimum rate go up
[9] as well?

[10] A: Yes.

[11] Q: And, what—is there a separate publication
[12] that the state issues memorializing the minimum rate?

[13] A: Well, they issued an order at that time.

[4] Again, as I testified earlier, all of that historical
[5] stuff was lost at my retirement. So, again, I'm just
[6] having to testify from my memory.

[7] Q: But, I mean, now, like, if there's an eight
[8] percent increase last year, would the state issue an
[9] order saying, this is the minimum rate?

[10] A: No.

[11] Q: And, what—how did you become familiar with
[12] the hearing that took place somewhere between '59 or
[13] '69?

[14] A: Again, I began working with then the

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[1] Department of Motor Transportation. Just reviewing
[2] the files and seeing what happened. I've seen the
[3] file itself, it was a very lengthy file. And, I had
[4] knowledge of its whereabouts until probably October of
[5] 1999. It included—I kept it at my own choice, not
[6] because I was mandated by any retention of records, I
[7] just thought it was an interesting, historical matter
[8] when movers become regulated.

[9] Q: Was there a transcript in the hearing?

[10] A: I'm sure there would have been. Yes.

[11] Q: Did you read it?

[12] A: I didn't read it in detail. But, I've
[13] looked—I don't know if the actual transcript that the
[14] court reporter provided, I'm sure I didn't see that.

[15] But, I seen the rest of the files.

[16] Q: And, were—what was the standard used to
[17] establish the rates at that time?

[18] A: I don't recall. I was going on to assume
[19] that those rates were patterned after, probably some
[20] federal guidelines that existed and issued to the
[21] Interstate Commerce—then Interstate Commerce
[22] Commission. I do recall a lot of the old tariff, the
[23] old in those files, some of the old—whether it was at
[24] this time or after that, but I do recall seeing some

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[1] of the old ICC tariff pages.

[2] Q: Were there—was there any kind of, like,
[3] mathematical formula that you plugged costs into or
[4] anything like that in your recollection of that file?
[5] A: I don't recall. I do recall vaguely the old
[6] cost studies that—I forget now, the—I remember, as a
[7] new employee coming in and seeing all of that
[8] statistical formula, I forget what the name of it was.
[9] But, it was a cost study, some uniform cost study and
[10] it was very, very in depth or involved.

[11] Q: And, were there people here at KTC that
[12] analyzed those cost studies?

[13] A: I'm sure there were. Even when I became
[14] employed in August of '72, there was a division called
[15] Rates and Services. And, it was—had a director. I
[16] think I was one of three auditors and a couple of
[17] secretaries. But, I will say that we—there were
[18] several other types of for hire carriers that had to
[19] file tariffs, not just household goods.

[20] Q: And, does that Division of Rates and Services
[21] continue to audit cost studies in the trucking
[22] industry?

[23] A: No. They—that division later become the
[24] Division of Motor Carriers.

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[1] Q: And, is there—are there cost studies that
[2] are performed now in KTC for household goods movers?

[3] A: Well, I've performed, I don't know if you'd
[4] label them cost studies, but I, when we get
[5] applications for tariff filings or rate increases, I
[6] review them and I use various procedures to determine
[7] whether those are just and reasonable. I think I've
[8] tried to share those in my testimony already. But,
[9] there is procedures that I go through to see if those
[10] rates are fair. But, official cost studies and
[11] publish them in some trade journal, no, they're not
[12] done.

[13] Q: You mentioned in your last answer that the—
[14] there aren't any official cost studies that are
[15] published. I just want to ask the question somewhat
[16] more broadly. Are there any type of economic studies
[17] done on the household goods movers industry in KTC?

[18] MR. McMAHON: Asked and answered. Other than
[19] what he's testified to already?

[20] MR. ABRAHAMSEN: Just using the word economic
[21] study rather than cost study, in case that's a
[22] narrower term. I want to make sure I'm not missing
[23] some sort of study that he's done that I haven't been
[24] told about.

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[1] A: Again, I do economic studies in my own course
 [2] of business. And, that includes cost studies, most
 [3] certainly, but not cost studies that's official and
 [4] published or published or an economic study. You
 [5] know, we, as I testified, in my visits and my audits,
 [6] common knowledge, you know, I have a truck myself and
 [7] I know what diesel costs when I go to the pump and pay
 [8] for it. I know that when I fill my diesel truck up,
 [9] there's increases. And, I'm aware of crude oil going
 [10] up. And, I'm aware of the economic indicators that
 [11] we're supposed to look at to determine that we have
 [12] access through them through trucking publications,
 [13] transport copy, for one. Although that's an industry
 [14] published document, it does carry third person,
 [15] independent analysis of various cost increases, I
 [16] routinely look at that document. But, there's federal
 [17] government issues, certainly cost indexes, I'm aware
 [18] of those. I rely a lot on other people's expertise in
 [19] these areas, rather than recreating my own.

[20] Q: So, you don't do an actual written study that
 [21] formulates or brings together this information?

[22] A: I have provided—I used to do, for example, a
 [23] monthly report to the Commissioner on activities of
 [24] the Division and within that, we would include rate

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[1] I felt that they might have questions with the public.
 [2] I do recall back during the fuel increases, that's
 [3] sort of a public thing, we were getting some very
 [4] rapid increases in fuel costs and I do remember
 [5] writing a report to the Commissioner. And, I'd do
 [6] that—if I felt he or she might be receiving public
 [7] inquiries, they would not know what it was about.
 [8] Q: When, approximately, was the fuel crises you
 [9] referred to?

[10] A: Those have been several times. I remember—I
 [11] forget when those were more prevalent. We have those
 [12] in existence now. But, they were more—we were doing
 [13] them almost monthly there some period of time, I
 [14] think, in the '80s or—again, maybe early '90s, I
 [15] don't know.

[16] Q: So, just so the record is clear on this,
 [17] 'cause I think I misunderstood one of your answers.
 [18] These—when you were doing a monthly report to the
 [19] Commissioner every month, that was sometime prior to
 [20] December of '79?

[21] A: I think I kept doing that up in the '80s. I
 [22] was later advised not to bother them with those
 [23] things. If they wanted something, they would ask for
 [24] it.

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[1] applications that I reviewed. And, I would attempt to
 [2] arrive at some type of operating ratio that we would
 [3] include. There was a—at that time a little more
 [4] familiar measure of profitability of the carrier. So,
 [5] you know, I've issued written documents outlining
 [6] proposals and my recommendations. But, in the recent
 [7] current and—short of being arrogant, I've not had to
 [8] do that because the responsibility has rested on me to
 [9] make sure those statutes are carried out. So, I've
 [10] not had to officially make those reports to anyone in
 [11] recent history.

[12] Q: When was the last time you filed a monthly
 [13] report to the Commissioner?

[14] A: Again, I had all of those in my—in these
 [15] files that I keep referring to as being lost.

[16] Probably after December of '79, and I'm very clear on
 [17] that event, because that was an event when we had some
 [18] major changes in leadership in the then Department of
 [19] Motor Transportation.

[20] Q: When was the last time you filed one?

[21] A: Again, I'd just be guessing. I don't know.

[22] I routinely—as I testified, I routinely submitted
 [23] those monthly prior to that date. After that, I would
 [24] only—I only submitted those things to superiors when

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OFF THE RECORD

LUNCH

MR. MIRUS LEAVES DEPOSITION

[15] Q: Let me ask you a question that I think has
 [16] been asked before in a different way, but let me make
 [17] sure the record is clear on this. When the Kentucky
 [18] Association files for, let's say, a general rate
 [19] increase, you've described for the record the process
 [20] that goes on, including the stamping in of particular
 [21] documents. And, I believe you stated that if the
 [22] state does nothing, then the increase will go into
 [23] effect. And, my question to you is whether the state
 [24] issues a written decision approving or disapproving a

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[1] request for a rate increase from the Kentucky
[2] Association?
[3] A: We issue a written statement, if it is
[4] disapproved or if we have questions or seeking
[5] additional information.
[6] Q: And, what about when they go into effect. If
[7] it goes into effect, is there a written decision
[8] explaining why the state let it go into effect?
[9] A: No.
[10] Q: You mentioned that when you go to do a
[11] compliance audit at the various carrier's offices,
[12] that you review—I believe you mentioned that you
[13] review certain documentation that they have. Can I
[14] ask you to state what documentation you review on
[15] those visits?
[16] A: Usually, each mover has a file, it's not a
[17] requirement, but just this is usually what happens, is
[18] movers include all of their appropriate paperwork with
[19] each move, with each shipper. And, within that
[20] grouping there will be, like, a bill of lading that is
[21] signed by the shipper. He'll have all the
[22] requirements on the bill of lading is required. He'll
[23] have a freight bill that identifies all the charges.
[24] I review them. There's usually what I'll call a

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[1] summary of what is included in the move. I think they
[2] refer to it maybe as an order of service or usually
[3] there's an estimation form in there. There's driver's
[4] waste tickets. Most of all of that is grouped in
[5] those. If they're not, then I usually ask for—if it
[6] is a move based upon weight, I'll usually ask for the
[7] weight certificates. Most of these carriers are
[8] established carriers. And, over the last twenty
[9] years, they're very familiar with keeping everything
[10] together, what they have to keep. So, usually it's in
[11] real good order, sometimes it's not, but usually it
[12] is.

[1] Q: Are there other types of documents that you
[2] routinely review at—that carriers have in their
[3] possession?

[1] A: I don't normally—right off the top of my
[2] head, I can't think of other things I review. Many
[3] times they share information with me, as I've
[4] testified. Some of the things they've encountered,
[5] whether it be affecting their business, some of their
[6] costs involved, they may share some complaints.
[7] Usually as a person from the state going to an
[8] industry, if they have a complaint against any part of
[9] the state, they share that with me. So—

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[1] Q: Would you routinely look at, say, balance
[2] sheets on these firms?
[3] A: Not routinely, no.
[4] Q: Would you routinely examine income statements
[5] from these firms?
[6] A: No.
[7] Q: Would you routinely review documents—payroll
[8] documents from these firms?
[9] A: I have, but not routinely.
[10] Q: And, why would you, at least on occasion,
[11] review a personnel—a type of document that I just
[12] mentioned?
[13] A: I recall one complaint off the top of my head
[14] that some mover had relative to one of their
[15] employees. And, I do recall talking—I talked to the
[16] carrier about that individual driver. And, I remember
[17] seeing some payroll. I think it had to do with when
[18] they were working and some allegations that maybe—and
[19] I was trying to prove that that person was actually on
[20] the job site.
[21] Q: Do you routinely review documents that would
[22] allow you to find out what the—what a carrier's total
[23] payroll expenses were?
[24] A: Not routinely.

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[1] Q: Do you review any documents—do you routinely
[2] review any documents of carriers that would allow you
[3] to determine what their cost of capital is?
[4] A: Not individual with a carrier, no.
[5] Q: Do you review carrier's documents on a
[6] routine basis that would allow you to analyze the
[7] profitability of that company?
[8] A: You're still asking those questions in the
[9] line of my compliance review audit—
[10] Q: Yes.
[11] A: —at their facility?
[12] Q: Yes.
[13] A: Not routinely, I would not do that at that
[14] type of audit.
[15] Q: Now, I'll ask the question more generally.
[16] Do you review documentation routinely that would allow
[17] you to determine carrier's profitability in some other
[18] context?
[19] A: Well, as I've testified, all through my
[20] exposure with the household good industry and through
[21] my own private research and knowledge, I'm aware of
[22] labor costs. Maybe not a particular carrier, unless
[23] they just ask for an increase on their own, which I've
[24] never experienced yet, only one carrier coming in to

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[1] me and saying, my labor costs have increased this
[2] much, I, individually, need this type of increase.
[3] Mostly lab—most usually labor costs and those type of
[4] general fixed overhead is—those information are—we
[5] would gather through our general rate increases,
[6] rather than some individual. But, I have looked at
[7] individual ones to get an idea of what the whole scope
[8] is of the industry.

[9] Q: You've looked at individual carrier's
[10] business documents to determine their labor costs?
[11] A: I have seen documents that they submitted.
[12] And, while I'm thinking here, I want to supplement an
[13] answer I've made also earlier. Is that I shared that
[14] we voluntarily ceased the requirement of an annual
[15] financial report, we still have carriers that still
[16] file that. So, I do see these annual reports, income
[17] statements and balance sheets, but they are a limited
[18] number. And, so technically I do see some, but it's
[19] not based upon a requirement.

[20] Q: Are those audited income statements?

[21] A: No.

[22] Q: Are they audited balance sheets?

[23] A: No. One reason why we discontinued doing
[24] them, because they were not and some of the third

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[1] I mean, are balance sheets. On the back there's a
[2] place for a signature and a—a signature under oath
[3] that it's a true and correct copy. It represents the
[4] financial condition of the company. But, this is only
[5] Page 1 of what was actually a six page report. There
[6] was an insert on the inside that referred to, just
[7] some—the number of trucks they operate, just some—
[8] who the owners were, what percent of interest in the
[9] company they own. Again, I'm speaking from memory.
[10] But, it is a breakdown as to their operation, where—
[11] how many miles they operate interstate, how many miles
[12] they operated intrastate. There's also a breakdown of
[13] their local and inner city moves.

[14] Q: Do you continue to get information routinely
[15] that allows you to break down carriers in Kentucky as
[16] to how much of their business is intrastate and how
[17] much is interstate?

[18] A: Usually we pick that information up at
[19] audits. But, not anything formal where we produce a
[20] percentage of intra versus inter. I think that's one
[21] of the goals we were working toward presently maybe,
[22] as I've testified earlier, trying to document a little
[23] better idea. We're told that most of their operating
[24] —I agree with that statement, that most of their

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[1] party people that were using those, we felt would
[2] misrepresent the industry's economic conditions.

[3] Q: And, how is that?

[4] A: Well, they're just not audited. They were
[5] not—some of them were, excuse me. Some of them were
[6] audited. If they had CPAs that submitted those, then
[7] I would refer to that as an audited statement. If
[8] they filled them out themselves, I refer to that as an
[9] unaudited.

[10] KTC EXHIBIT NO. 102 MARKED

[11] Q: Let me show you a document that has been
[12] identified as KTC 102 and ask you to take a look at
[13] it. Do you know what this document is? It came from
[14] the state's files.

[15] A: Yes. This is the annual financial report I
[16] was referring to. This is a particular one that
[17] continues to file one, although they're not required
[18] to, just as I've testified to. So, in fact, I have
[19] seen these—some income statements, some—this is not
[20] the full one, but—full copy. It has also a balance
[21] sheet in the income statement. It's a four page
[22] document. For some reason, this is only—maybe this
[23] is all they filed. It is a—the front page is an
[24] income statement, the two center pages are financial—

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[1] operations are interstate in nature and I think we
[2] were trying to confirm that.

[3] Q: So, this document—can you—and I apologize,
[4] this is just what we had in the files. And, I—if
[5] there were other documents—I do not believe there
[6] were any other documents that went with this of the
[7] nature you've just described, or I most certainly
[8] would have included them in what I've handed you.
[9] But, I, nonetheless apologize for giving you something
[10] that you've testified to is a partial document. Can
[11] you tell whether KTC 102 is an audited or an unaudited
[12] income statement?

[13] A: This particular one I can't, because, as I
[14] said, the back page would reflect that.

[15] Q: Is it—these appear to be handwritten entries
[16] into the income statement. Is that common or is that
[17] unusual?

[18] A: Common.

[19] Q: And, I notice under—it's the only entry
[20] under operating revenues, it simply says moving
[21] household goods and then it gives a number 19,654.

[22] A: Uh-huh. (Yes)

[23] Q: What does that represent?

[24] A: That's their gross revenue from their moving

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[1] of household goods.

[2] Q: Intrastate, interstate or both?

[3] A: That figure—excuse me. Again, I'm trying to
[4] think from memory. I've seen enough of these, I
[5] should recall this a little better. But, on the third
[6] page it would break—that \$19,000 would be broken
[7] down. It would be broken down as to interstate and
[8] then intrastate. And, intrastate was further broken
[9] down into local and inner city. So, just reading the
[10] front page, I can't say whether that includes inter or
[11] intra, but if we had the full document, I could.

[12] Q: And, what information would you glean from
[13] reviewing this document, if any?

[14] A: Well, we would look at the revenues and
[15] expenses. That particular one, that would show a very
[16] healthy profit margin. So, this would be a tool that
[17] we might use or would use, excuse me, if an increase
[18] came through, this would just represent one individual
[19] carrier. This particular carrier is a member of the
[20] association, so we wouldn't be the whole industry on
[21] this one report, but it's a cumulative—we would
[22] accumulate all these different ones with a spreadsheet
[23] type thing and it would have all the revenues and then
[24] the total would come up as some type of operation—

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[1] operating ratio.

[2] Q: Now, we—

[3] A: While I was talking and looked at the back
[4] page of this, this was submitted and then it's got a—
[5] this document appears to be submitted by a CPA to then
[6] my secretary, Pat Lippert. So, this particular one
[7] may have been audited.

[8] Q: And, it shows that this company made \$90 in
[9] the period—for the year ending December 31st, 1999?

[10] A: I think it shows they made \$305. I think the
[11] net operating—it looks like what—that may not be on
[12] the right line. But, it's got \$215 of other expenses.

[13] So, the operating—gross operating—excuse me, net
[14] operating would be 305 and then it had other expenses,
[15] other than operational, accounting of 215 so that left
[16] them a \$90 profit.

[17] Q: Did you take any steps to determine whether
[18] these numbers were accurate?

[19] A: Well, if you looked at the whole report, you
[20] could, because the breakdown of intrastate would be
[21] the same. I mean, excuse me, the breakdown on those
[22] pages would give you some idea of it. And, then
[23] again, they also have to file this with the Interstate
[24] Commerce Commission, if they had interstate authority.

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[1] And, the interstate—the bigger carriers, these are
[2] filed by small carriers. The big carriers would file
[3] probably a 200 page book, a very thick document, and
[4] it had very, very detailed information. And—but, on
[5] the small, what they call class three and four
[6] carriers, it's a very simple report and you could
[7] audit a year of revenues and come up with some pretty
[8] good idea as to whether those figures were correct or
[9] not.

[10] Q: Was that done? Were they audited by the
[11] state—

[12] A: Yes.

[13] Q: —at one point?

[14] A: Yes, sir.

[15] Q: And, how long ago was that?

[16] A: I don't think the last three years one has
[17] been done for a full year. Routinely all of them were
[18] audited all through the '70s, all through the '80s.

[19] But, I don't recall within the last three to five
[20] years of more than one or two being totally audited.

[21] Q: You mentioned in an answer previously that a
[22] spreadsheet being filled out with the operating
[23] revenues from many firms.

[24] A: From all of them that were required, yes.

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[1] Q: When was that done?

[2] A: I done it in the '70s routinely.

[3] Q: And, did you calculate the operating ratio?

[4] A: Yes.

[5] Q: Let me ask the question again. I paused and
[6] you answered, but let me—

[7] A: I thought you were asking two questions. I'm
[8] sorry.

[9] Q: Yeah. Let me—did you—on the spreadsheet
[10] based on the documents that you received, did you
[11] calculate the operating ratio for all household goods
[12] movers?

[13] A: Yes.

[14] Q: And, what were those operating ratios?

[15] A: Anywhere from—the bigger carriers would run
[16] in the ninety-two, ninety-three, ninety-four.

[17] Marginal carriers went up into the high nineties, some
[18] of them went over 100. Over 100 means you're in the
[19] red.

[20] Q: And, when was this done again? I may have
[21] asked you that, but I didn't put it in my notes?

[22] A: Routinely done in the '70s, early part of the
[23] '80s. I don't know if any were done—most certainly
[24] in 1999 when this was filed, one would not have been

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[1] done for this period.
 [2] Q: Why was this discontinued?
 [3] A: There really wasn't a need for it. You know,
 [4] the—if major increase percentages had been asked for,
 [5] then we would have went into that depth. But, most
 [6] all increases that were submitted were, and we've seen
 [7] introduced here, three, five, I think the highest was
 [8] eight. During very major times of inflation,
 [9] increased cost, increased expenses of fuel and
 [10] insurance. In my opinion, and the statutes gave me
 [11] that judgment call, I didn't see it necessary to make—
 [12] —spend the time and expense of going into that in
 [13] depth study when I felt common sense provided me that
 [14] judgment.

[15] Q: How much—how many people would be involved
 [16] from the state—how many state employees would be
 [17] involved back in this time period when they were
 [18] preparing these spreadsheets that included operating
 [19] ratios from all of the household goods carriers?
 [20] A: As I said, they were—we had two auditors,
 [21] there were five or six in the division. It became
 [22] pretty lengthy. We did not have the computer age we
 [23] had now, so everything had to be manually done and
 [24] calculated. So, it was somewhat time consuming. At

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[1] that time the industry was—without offending anyone,
 [2] at that time the industry was a little bit less
 [3] professional than it is now. We felt the need to do a
 [4] little bit more in depth review of their financial
 [5] operation. And, it was very common to have two or
 [6] three pretty major rate increases. But, I've
 [7] testified, you know, in recent years, those have been
 [8] less than what our sovereign counterpart, the federal
 [9] government has approved already an interstate
 [10] movement. So, we have relied a whole lot on those
 [11] types of decisions that the van lines have gotten
 [12] through their filings with the Interstate Commerce
 [13] Commission and now the Federal Surface Transportation
 [14] Board.

[15] Q: They file those with the board or—
 [16] A: I don't think they have to file them. I have
 [17] to—I think we have to maintain them.
 [18] Q: And, you say they were approved by the
 [19] Federal Government?
 [20] A: Well, that's a loose word. But, sometimes I
 [21] question what activity they do do. But, there's some
 [22] documents that or some process that they attempt to go
 [23] through.
 [24] Q: And, they, in that phrase meaning who?

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[1] A: The Federal Surface Transportation Board. I
 [2] get my pertinent pages from present tariff from the
 [3] moving industry, not the—that agency. So—
 [4] Q: Have—
 [5] A: —if they're legally approved or filed or
 [6] maybe they're just—I don't know.
 [7] Q: So, have you ever received, say, since 1995,
 [8] have you ever received any documentation from the
 [9] federal government indicating that they had reviewed
 [10] or approved the federal tariff?
 [11] A: Not from the federal—
 [12] Q: Federal government?
 [13] A: —federal government, correct. I haven't
 [14] asked for it. I mean, it's not that they have denied
 [15] to submit anything, I've just not asked for it.
 [16] MR. ABRAHAMS: Can we take a break? I'm sorry.
 [17] MR. McMAHON: What are you sorry about?
 [18]

RECESS

[19] Q: The—has the state ever rejected a tariff
 [20] filed by the Kentucky Association because the tariff—
 [21] based on the level of the rates in the tariff?
 [22] MR. McMAHON: Object to the form of the question.
 [23] A: Have we ever rejected a tariff based upon the
 [24] level of rates?

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[1] Q: Yes.
 [2] A: I don't think we've rejected a full tariff.
 [3] I think we've, you know, suspended pages or—we
 [4] haven't rejected a full tariff, no.
 [5] Q: And, to do that, you'd have to have a
 [6] hearing, correct? To my—
 [7] A: No.
 [8] Q: You wouldn't have to have a hearing to reject
 [9] the rates?
 [10] A: We could reject a filing on our own motion.
 [11] If we are challenging the rates, those rates and
 [12] charges would have to be set after a hearing and
 [13] production of evidence. But, we have the right to
 [14] suspend for a period of time.
 [15] MR. McMAHON: Can we go off for a second?
 [16]

OFF THE RECORD

[17] Q: Has the state rejected or disapproved rates
 [18] contained in the Association tariff?
 [19] A: Yes.
 [20] Q: Under what circumstances?
 [21] A: Most recently, and I think we have three
 [22] outstanding now where individual carriers have filed—
 [23] excuse me, two, probably one, I think we've let go.
 [24] Where the individual carrier has filed either a

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[1] special rule for the—applying for them. We've talked
 [2] some about one that's more of a general application.
 [3] We rejected one relative to the excess evaluation
 [4] charge. I don't know if we've officially object—
 [5] rejected it, but the one that established the peak,
 [6] non-peak rates, there was a time, and this is going
 [7] back in history a little bit longer. But, at one
 [8] time, the Cabinet took the position that you could not
 [9] publish rates in a tariff to which no one
 [10] participated. And, the association filed several
 [11] pages of new rates for which no one participated. I
 [12] don't know really the official proceeding that went on
 [13] there. But, I think those were initially rejected.

[4] Q: Has the state ever rejected the general
 [5] intrastate rates contained in the Kentucky Association
 [6] tariff?

[7] A: Again, as I testified, I think several years
 [8] ago, when it was common for companies to pay for their
 [9] employee's moving expenses as part of their employment
 [10] package, I think we had some official protests to some
 [11] rates. I think those were suspended, but was set
 [12] aside after some discussions with the shippers and
 [13] some additional information received from the movers.
 [14] I do recall the shipper that was involved.

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[1] through the expertise of this Cabinet setting and
 [2] approving the rates. But, as far as official policy
 [3] stating that to allow ninety-five or ninety-three
 [4] percent ratio—operating ratio, we never had that.
 [5] Q: Did you have an unofficial policy or range
 [6] or—
 [7] A: I personally did. What I thought was—it was
 [8] usually based upon things like, if that person sold
 [9] all their trucking equipment, fired all of their
 [10] employees and put the money in the bank, how much
 [11] would they make? And, I would call it easy money.
 [12] And, then you had some amount of money for that for
 [13] working for a living. So, you know, there was some
 [14] idea of what I felt a company should be making. I
 [15] think it come up to be an eighty percent ratio. And,
 [16] I think that would be not in the best interest. As
 [17] well, if it got to 103 or it's losing money, I felt
 [18] that wouldn't be in the best interest either. So,
 [19] there was some average guidelines that are probably in
 [20] the mid to low nineties would be—industrywide, was
 [21] acceptable as being good.
 [22] Q: And, if it was in the eighties, that would be
 [23] unacceptable for what reason?
 [24] A: First of all, we never had that problem.

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[1] Q: And, approximately when was that?

[2] A: I want to say maybe mid to late '80s, mid
 [3] '80s.

[4] Q: And, are—do you recall any other instances
 [5] where the general intrastate rates contained in the
 [6] Kentucky Association tariff were rejected by the
 [7] state?

[8] A: Not from memory, no.

[9] Q: When the—in those years, when the state was
 [10] preparing a spreadsheet, with the operating ratio on
 [11] it, did the state have a policy of having the rates at
 [12] such a level as to meet a target operating ratio for
 [13] the industry?

[14] A: No. We didn't have a written policy. We had
 [15] guidelines at other states. And, during that period
 [16] of time, there was a very active—I mentioned the
 [17] National Conference State Transportation Specialist.
 [18] I chaired the Rate Committee for a couple of years
 [19] during that time. We were very active in prescribing
 [20] rates and setting rates. Many states back then, the
 [21] agency themselves set the rates with limited input
 [22] from the industry. And, we chose never to operate in
 [23] that manner that we've always had industry
 [24] participation and public participation, if they chose,

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[1] But, if it had of been, that would lead you to believe
 [2] that the company's either very good managed or their
 [3] rate scale is excessive.

[4] Q: In terms of the shippers, is that what you
 [5] meant by excessive?

[6] A: No. I'm saying that—I'm saying if it had a
 [7] —that either the manager was managing his company
 [8] very well, or the rates they were charging the
 [9] shippers was excessive.

KTC EXHIBIT NO 103 MARKED

[10] Q: Let me show you an exhibit I've marked as KTC
 [11] 103 and ask you to take a look at that. Can you
 [12] describe for the record in your terms, in your words,
 [13] what this document is?

[14] A: This is a cover letter that the association,
 [15] through its chairman of its Rate Committee submitted
 [16] to Director Taylor, identifying as the statutes and
 [17] regulations require, a detailed statement of the
 [18] change that is being sought. It tells the basis for
 [19] what the change was, and justified it through a
 [20] similar adjustment made through the ICC at that time—
 [21] excuse me, the Surface Transportation Board, that they
 [22] had approved similar tariff increases.

[23] Q: Again, when you—

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[1] A: I should say approved or allowed to be
[2] published. As I've testified, the word approved is a
[3] big word. But, at least, they were filed with the
[4] federal counterpart.

[5] Q: They were filed?

[6] A: Yes. Well, these schedules met the
[7] requirements of the federal counterpart. It's my
[8] knowledge that they have to be maintained in their
[9] office, but no longer had to be filed.

[10] Q: I just want to make sure the record is clear.
[11] The—No.—paragraph No. 2 says increase packing
[12] container and labor charges for packing by five
[13] percent. This is a description of what's being
[14] increased in the proposed supplement, is that correct?

[15] A: That's correct.

[16] Q: Okay. And, the first sentence of the second
[17] to last paragraph on the page, it is the policy of the
[18] Board of Directors of KHGCA to follow the guidelines
[19] of the Bureau when adjusting rates and charges in the
[20] Kentucky tariff. What is that a reference to, do you
[21] know?

[22] A: I'm assuming that they're referring to—for
[23] many years, this Department was referred to as a
[24] Bureau of Vehicle Regulation. And, I'm assuming that

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[1] they're saying that it is the policy of the Board of
[2] Directors of the Kentucky Household Goods Movers—
[3] Carriers Association, to follow the guidelines of the
[4] Bureau of Vehicle Regulation when adjusting their
[5] rates in section No. 5. I don't think that's
[6] referring to some—I'm assuming that's what that is.
[7] As a matter of fact, I'm sure that's—they use the
[8] word Bureau very routinely as an incorrect reference
[9] to the Department, it's an understandable oversight,
[10] most certainly.

[11] Q: 'Cause when I read it, I thought it possibly
[12] was referring to the Household Goods Carriers Tariff
[13] Bureau—

[14] A: No.

[15] Q: —which is referred to earlier in the letter.

[16] A: Their tariff used to be referred to as the
[17] KYD—excuse me, KYBVR and they still refer in some
[18] cases their BVR number, which is Bureau of Vehicle
[19] Regulation. But, that's just as choice of title of
[20] this agency.

[21] Q: So, is there—this is—what do you call this
[22] document? Do you have a name for this document so I
[23] can refer to it in any—

[24] A: I would say it's a cover letter, as I said,

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[1] that they have submitted with their tariff filings to
[2] summarize discussions or to reaffirm what is included
[3] in the tariff that is being proposed. And, again, it
[4] outlines what's—what the tariff changes are about.
[5] It's a summary of what's being changed.

[6] Q: And, is this—they refer to the document in
[7] the second—the very last sentence of the document,
[8] they refer to it as this justification. Is this also
[9] a document that is meant to justify the increases?

[10] A: It is—it's not standard for this type of
[11] cover letter to be issued. As a matter of fact, this
[12] is probably the exception. And, let me just—I've
[13] testified that that word Bureau means the old Bureau
[14] of Vehicle Regulation. I'm somewhat uncertain now as
[15] you've stated yourself, I really don't know what that
[16] —it very well could have referred to as the—it
[17] mentions up there Tariff Bureau, that could be the
[18] interstate tariff operations.

[19] Regardless of what they say in that paragraph
[20] there, they are required to follow the guidelines of
[21] this Department, not some tariff publishing bureau.
[22] But, I want to clarify my answer on that one.

[23] But, as I've testified earlier, this document was
[24] submitted to then Director Taylor. Normally they did

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[1] not accompany the tariff filing with a specific cover
[2] letter. I think—and again, I'm speculating, but I
[3] think they were giving Mr. Taylor a little extra
[4] courtesy in identifying exactly what was being
[5] contained in the tariff. Usually the tariff—we've
[6] already received all of the justification at this
[7] stage, as I've testified, a process they go through
[8] with. So, we, at this stage, we already have the
[9] justification. We've already accumulated that in this
[10] sixty day process or longer. So, I think this is just
[11] a summary of what's taking place, because the tariff
[12] cover letter itself goes into line item detail about
[13] what's being changed.

[14] But, I think this was started back in early 2000
[15] as just a courtesy to Mr. Taylor to give him a little
[16] more summary of what he was passing on to me.

[17] Q: In terms of written documentation that's
[18] submitted to the state, aside from KTC 103, what other
[19] written information would be submitted to the state to
[20] justify this eight percent increase in the
[21] transportation rates?

[22] A: Well, we would have—again, I'm having to go
[23] from, not my specific memory of this filing, but how
[24] we would normally handle these. They would have

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[1] probably submitted to me in the early stages of the
 [2] process, the interstate rates and they would have
 [3] submitted to us—sometimes I've even seen publications
 [4] where it states that the federal—van lines or
 [5] something, where the federal government's approved X
 [6] amount of percent of increase. The most—as I've
 [7] said, many times they would submit actual tariff pages
 [8] of tariff 400. Those are generally some of the things
 [9] we received.

[10] Q: And, I believe you stated earlier that in
 [11] addition to receiving written information, you would
 [12] also receive verbal information during the period
 [13] where there was a proposal for, let's take this as an
 [14] example, this eight percent increase. Could you give
 [15] me what you remember about any verbal justification
 [16] that was given for this increase?

[17] A: Again, I can't remember specific statements
 [18] or points of justification. It was very common for
 [19] them to state to me that their costs for doing
 [20] intrastate work was equal to that of interstate work.
 [21] And, if interstate went up eight percent, then it
 [22] should be logical to assume that intrastate should be
 [23] increased by an equal amount. Almost every time we
 [24] discussed it, they would remind me that Kentucky's

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[1] rates are below surrounding states. To use their
 [2] words, they've been trying, over the last three or
 [3] four years, to catch up more with surrounding states
 [4] and the intrastate of some of the surrounding
 [5] neighbors. Those are the kinds of verbal things they
 [6] would tell me.

[7] Q: What specifically—what is the level of
 [8] specificity with which they would verbally communicate
 [9] to you the notion that their costs had increased?

[10] A: I guess I'm not following your terminology,
 [11] level of speci—

[12] Q: I just—you said that you had conversations
 [13] and I know you're not going to be able to remember
 [14] exactly what was said, but we need the record to
 [15] reflect, as close as you can remember it, what words
 [16] they used. And, what I'm really driving at is, how
 [17] specific their words were about their cost increase,
 [18] if you can just share with us what was said from your
 [19] memory.

[20] A: Well, they were—they would have been
 [21] specific enough for me to understand what they're
 [22] telling me. If it just said generally, well, my fuel
 [23] expenses have went up. Let me stay with this one
 [24] though, excuse me. They would just say, well, my

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[1] material for packing has gone up a lot, then I
 [2] probably wouldn't have accepted that. But, if they'd
 [3] used details like a roll of paper, and I recall them
 [4] saying things like this, a roll of packing paper would
 [5] cost X amount of dollars last year and this year, it's
 [6] this amount of money. As I'm talking I remember them,
 [7] at this period of time, paper for some reason, I
 [8] guess, due to some timber restrictions out west or
 [9] something, paper was—the cost of paper was going up.
 [10] But, they were—they would be specific enough to
 [11] either satisfy or not satisfy me. And, if they were
 [12] not specific enough at that level, then I would ask
 [13] for more information.

OFF THE RECORD

[14] Q: Why—again, referring to KTC 103, you
 [15] mentioned that you remember during this time period
 [16] that packaging costs were increasing. Why was there
 [17] no request for increase in packaging?

[18] A: There was increase packing containers and—
 [19] for packing of five percent.

[20] Q: Maybe it's just me. The last sentence on the
 [21] first page of KTC 103, it says the board withheld any
 [22] action of the increase of charges for packing
 [23] containers and packing services at this time. Do you

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[24] know what that's a reference to?

[1] A: No, sir. I don't.

[2] Q: Aside from a verbal indication of the cost of
 [3] a roll of paper had increased from X to Y the
 [4] following year, what other verbal information did you
 [5] receive to justify this eight percent increase?

[6] MR. McMAHON: Object to the form of the question.

[7] A: Again, let me clarify my previous answer.

[8] When I was using the packaging material, paper cost,
 [9] that was an example of discussions I've had trying to
 [10] answer your question about the level of how a specific
 [11] increase would be. I wasn't necessarily referring to
 [12] this particular increase, although it could have been.
 [13] I was speaking more in general terms.

[14] Q: I beg your pardon.

[15] A: What other information that I might have
 [16] heard or received, other than what I've already
 [17] answered in a routine nature, I don't know of anything
 [18] specific that I received.

[19] Q: Did this eight percent increase, was it
 [20] allowed to go into effect?

[21] A: Yes.

[22] Q: And, what—did you have a particular standard
 [23] or formula that you applied to determine whether the

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[1] eight percent increase was appropriate?
 [2] A: Not other than what I've already testified
 [3] to.
 [4] Q: Would you have any way of determining whether
 [5] the eight percent increase would result in an increase
 [6] in carrier's profit from, say, to a level that is,
 [7] say, higher than the level of profitability they would
 [8] have had immediately following the previous general
 [9] increase?

[10] A: Other than just relying on information that
 [11] they would share. Most of these percentages were
 [12] submitted based upon the increased costs that they
 [13] were incurring. So, if they—and again, I'm going to
 [14] be general. If they were increasing their rates due
 [15] to insurance, and increased insurance is not mentioned
 [16] here, but in almost all of our conversations, they
 [17] shared increased cost or the lack of ability to
 [18] purchase liability insurance. These are requests that
 [19] they come to us for to offset the increase in these
 [20] overhead and expenses they have. So, how that would
 [21] affect their profitability, would be increase it or
 [22] stand status quo. It would be difficult for us to
 [23] determine that.

[24] MR. McMAHON: Mr. Abrahamsen, I've just got to

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[1] offer a comment, which is that these questions
 [2] focusing on esoteric economic analysis, in my view, go
 [3] far beyond any understanding of the appropriateness of
 [4] a state action defense that I can see.

[5] I'm just wondering if—does this make sense to
 [6] you?

[7] I don't know any articulation of the state action
 [8] defense that I've seen that would allow such excessive
 [9] detail in the examination of a state official on a
 [10] regulatory program.

[11] MR. ABRAHAMSEN: I really don't think this is the
 [12] time or place to argue the standard.

[13] MR. McMAHON: I mean, we're going on and on and
 [14] I'm wondering if we're going to finish today. It's—
 [15] there's a—matter of expense is a big issue for my
 [16] client, that's the only reason I raise it, otherwise
 [17] I'd be more than happy to go on forever. I just raise
 [18] it for that reason.

[19] Having made the comment, I just wanted to put it
 [20] on the record.

[21] MR. ABRAHAMSEN: Well, I appreciate—

[22] MR. McMAHON: But, I don't intend to have a legal
 [23] argument either. But, the issue of expense is a very
 [24] serious one for my client in defending this

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[1] proceeding. So, I just wanted to call it to your
 [2] attention.

[3] MR. ABRAHAMSEN: Well, I appreciate that. And, I
 [4] just want to make sure the record is clear as to all
 [5] of the steps that the state took and any other factors
 [6] that may not have taken place that some reviewing
 [7] official might find relevant.

[8] Q: So, is there—you have—the state—the
 [9] statutes states that the rates in the tariff should
 [10] not be excessive, that's one of the words that we
 [11] looked at when we looked at the statutes governing
 [12] rates. How could you determine—how did you determine
 [13] that the eight percent increase would not result in
 [14] excessive rates?

[15] A: Well, again, I'd have to rely on what I've
 [16] already testified to, the process that I go through.
 [17] And, in absence of public complaints, although most
 [18] everybody wants people to move them for nothing, most
 [19] usually people are more—we have few complaints on
 [20] price, most of it's on service, loss and damage.
 [21] Sometimes we do have complaints on excessive time for
 [22] local moves. But, that's not—they're not complaining
 [23] on the rate of the charge. They complain more on the
 [24] mover that is—might be abusing that hourly privilege.

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[1] Q: Aside from the absence of complaints, would
 [2] you have any other way of determining whether or not
 [3] an eight percent increase would be excessive?

[4] A: Well, again, I've testified we've not done a
 [5] cost study at this time to determine that. But—

[6] Q: Did you receive—do you receive any input
 [7] from any groups that have identified themselves as
 [8] consumer advocates about the level of rates?

[9] A: No. I have the opinion that that is part of
 [10] my job, is being a consumer advocate, when I attend
 [11] the board meetings. When I perform my job, although
 [12] the moving people are taxpayers of the state and
 [13] citizens of the state too, I feel part of my job is
 [14] representing the public who do not have the ability to
 [15] come to these meetings and does not have the expertise
 [16] to review these rates. Like I said, some of the
 [17] bigger companies that I spoke of earlier that paid the
 [18] way—paid the moving expenses through their employer/
 [19] employee package, some of those people had that
 [20] expertise to follow that. But, just the mom and pop
 [21] that moves one time every five years, I'm assuming
 [22] they're relying on my expertise to intervene on their
 [23] behalf. And, I see myself as a consumer advocate in
 [24] that regard.

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[1] rates that were ultimately approved or went into
 [2] effect?

[3] A: I do know his tariff was approved. Now,
 [4] whether it was these rates, I don't recall. As I
 [5] recall, his tariff was just larger than just a one
 [6] page document. These may be the rates, but there's
 [7] other information in his tariff.

[8] Q: And, were these rates consistent with the
 [9] rates in the Kentucky Association tariff?

[10] MR. McMAHON: Object to the form of the question.

[11] A: Without doing a specific review, I couldn't
 [12] answer that.

[13] Q: We've spoken a lot about the Kentucky
 [14] Association tariff, but I wanted to show this one, you
 [15] know, as an example of maybe one that wasn't part of
 [16] that association. What—these rates were ultimately
 [17] not approved, at least, they did not go into effect,
 [18] as we have them here, because, as you said, this was
 [19] rejected for not being a tariff. So—but, as for the
 [20] rates themselves, when they would—if somebody
 [21] proposed rates such as those rates depicted on 0522,
 [22] how would you analyze whether they were excessive?

[23] A: Well, first of all, you stated that these
 [24] rates were not approved. And, I answered that I was

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[1] not aware of whether these specific rates were
 [2] approved or disapproved. I recall the company, I
 [3] recall us rejecting his tariff, the specific grounds,
 [4] whether for rates, I don't recall that they were
 [5] rejected on rates. I just think it was unclear as to
 [6] which tariff provided—would prevail. To answer your
 [7] question, how I would determine whether these rates
 [8] were just or not, I would compare them to what we'd
 [9] already approved in the joint tariff, would be the
 [10] first step. This particular carrier, I believe, was
 [11] based in Louisville, so we probably would compare
 [12] those local rates and hourly rates to other approved
 [13] rates in the Louisville area. Again, I don't see that
 [14] they were rates based upon mileage and distance and
 [15] weight. So, I—that would also—if that had been a
 [16] part of this tariff, that would have also been
 [17] compared to the rate schedule that we had approved for
 [18] the joint tariff.

[19] Q: And, if these were higher than the rates
 [20] approved in the collective tariff, would they still be
 [21] allowed to go into effect?

[22] A: Possibly.

[23] Q: Is there a—do you have a standard by which,
 [24] you know, if they were X percent higher, you would not

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[1] have allowed them to go into effect?
 [2] A: As I've already testified, we don't have any
 [3] specific standards documented. In my own mind, I
 [4] would have percentages that I would be concerned
 [5] about. But, as far as a specific standard, for
 [6] example, if these had been ten percent higher, would I
 [7] have rejected them, if it had been twenty percent
 [8] higher, would I have rejected them. Most certainly I
 [9] would have inquired more in depth if they would have
 [10] been a significant amount of variance, both over and
 [11] under.

[12] Q: And, do you recall whether that happened in
 [13] the instance of the Apartment Movers?

[14] A: No, I don't recall.

[15] Q: Was there other written information submitted
 [16] by Apartment Movers, if you recall, to explain the
 [17] basis for the rates they proposed to charge?

[18] A: I don't recall. As I look at some of these
 [19] other documents to this, I'm reminded of another issue
 [20] that took effect—that took place. They had some type
 [21] of a process where they had some kind of computerized
 [22] tariff process that they would enter into X amount of
 [23] information and it would come up with what the cost of
 [24] move was going to be. And, I felt those rates were

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[1] not specific enough, that it had to be more detailed
 [2] and how they were basing their rates versus a—versus
 [3] using just some kind of computer format that come up
 [4] with some undeterminable price for the cost of the
 [5] move. So, that was the reason it was rejected. The
 [6] problem was not because of the rates, but because the
 [7] format of the—the allusive format of the tariff
 [8] itself.

[9] Q: I want to know for the record, because one of
 [10] my questions could have misled the record. This
 [11] document KTC 108 contains Page 0525, which is the
 [12] request for tariff change form 4286 that, I believe,
 [13] may have been accompanying, at least, some of the
 [14] Apartment Mover's documentation and it clearly did get
 [15] into the hands of the state, 'cause we received it
 [16] from the state. So, my question was, whether you
 [17] recalled any information, other than this form 4286.
 [18] I just wanted to make sure my question was clear to
 [19] you. The—

[20] MR. McMAHON: What was the answer?

[21] Q: You had said earlier that you didn't recall
 [22] any other written justification that was sent in.

[23] And, now that we've had this discussion about Page
 [24] 0525, perhaps you should answer my question again.

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[1] The question being, with respect to tariff, did
[2] Apartment Movers attempt to get a tariff with its own
[3] independent rates or were there other written
[4] documents sent to the state, other than 5—the page we
[5] see on 0525?

[6] A: I was—I'm sure there were other written
[7] documents. And, I think my testimony and answers
[8] relate to—if I'm wrong, you can back up and reask
[9] them. But, I thought you asked me, were there other
[10] justifications for their rates. And, I said, I do not
[11] recall. Then we were—we went to the—into the rate
[12] discussion. And, then after my testimony, looking at
[13] the back page, I've become more familiar with why our
[14] concern for the tariff, and that concern was that they
[15] had developed some type of a franchised computer
[16] program that would rate these moves. And, as I said,
[17] I felt those—that process was not in the best public
[18] interest, they needed to be more detailed. But,
[19] again, my testimony is, I do not recall specific
[20] justification, other than what we have provided. And,
[21] again, if that's in those documents that we provided,
[22] then I'll be happy to look through them and try to
[23] pull them out for you. But, not from memory, I can't
[24] answer that.

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[1] Q: We've made, over the last two days, numerous
[2] references to the interstate tariff that is published
[3] by the Household Goods Carriers Bureau. How do you
[4] refer to that tariff?

[5] A: Are we speaking about the intrastate tariff
[6] that we're questioning?

[7] Q: No. The interstate published by the
[8] Household Goods Carriers Bureau.

[9] A: I refer to it as the 400 series. Again,
[10] that's just industry terminology.

[11] Q: In the rates that are contained in the 400
[12] series, are interstate or movers who move household
[13] goods interstate, are they permitted to discount those
[14] rates?

[15] A: Yes.

[16] Q: And, do they—in your experience, do they
[17] discount those rates?

[18] A: Yes.

[19] Q: What is the level of discount?

[20] MR. McMAHON: I have to—I'm going to raise an
[21] objection based on any relevance. But, that question
[22] is—it's just—it's culpable irrelevant, I think, Mr.
[23] Abrahamsen. Having said that, I guess—I tried not to
[24] object. But, I have to make the objection.

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[1] A: I've seen freight bills five, fifty, seventy
[2] percent, five percent, fifty percent, seventy percent,
[3] thirty percent. I don't know what the range is.
[4] It's, again, whatever they want to charge. In my
[5] opinion, most certainly, that is not a rate
[6] regulation. I feel like what we are doing here in our
[7] state is rate regulation.

[8] Q: Do you have—do you know what the industry
[9] average is for discounts of the 400 series tariff?

[10] MR. McMAHON: Object to the form of the question.
[11] Is there an industry average?

[12] Q: If you know.

[13] MR. McMAHON: It doesn't exist.

[14] A: I don't know the answer to that. But, I do
[15] know that with that standard in place, the movers can
[16] elect to discount whatever they want to. They can
[17] discriminate according to who they're talking to. If
[18] they've got a mover that is one that can be very
[19] attractive to have in your fold, then you can offer
[20] a very major discount. If it's some individual that
[21] will move one time in their lifetime, there may be
[22] no discount. As I've stated, I try not to personalize
[23] my comments. But, on this one, I have a major problem
[24] with that. That it allows for abuse and

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[1] discrimination. It gives movers the opportunity to do
[2] what they want to. That's exactly what we are trying
[3] not to do here with our state policy. But, as far as
[4] getting to your question now about the percentage, I
[5] would guess in the twenties and I may be 100 percent
[6] wrong, but what I've seen on improper rated bills, I
[7] would have to say averaged in the twenties.

[8] Q: And, that's an estimate that you've come up
[9] with, the twenty percent discount?

[10] A: That is a guess that I came up with, based
[11] upon looking at what I have found to be improper rated
[12] bills on the bottom. As I've testified to, on a
[13] couple of them that we talked about early on, that if
[14] you—it's exhibits already testified to. Some of them
[15] are thirty, some of them are fifteen, some of them
[16] were ten. And, so I'm guessing—in answer to your
[17] question, I'm guessing, an average would be roughly
[18] twenty some percent.

[19] Q: And, is there, to your knowledge, any
[20] industry publication or government publication that
[21] provides a measure of the actual cost of moving
[22] interstate household goods as compared to the rates
[23] for moving interstate household goods in the 400
[24] series tariff?

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[1] A: I'm not aware of any.
 [2] Q: Have you ever had any discussions with people
 [3] at the Kentucky Association about what they think the
 [4] level of discounting is off the 400 series tariff
 [5] rates for interstate moves?
 [6] A: Part of my job is to discourage any
 [7] conversation relative to that matter. I think that
 [8] would only confuse the members and lead them to
 [9] believe that that was a policy that they could do.
 [10] So, no. Certainly other than saying that discounts
 [11] are prohibited and we expect them to charge what their
 [12] tariff says and nothing more and nothing less.
 [13] Q: Did you ever—have you ever had any
 [14] discussions with members of the Kentucky Association
 [15] about the level of discounts that are made for
 [16] interstate movers from the 400 series tariff?
 [17] A: That's how I just answered my last question
 [18] relative to interstate.
 [19] Q: How do the rates in the Kentucky Association
 [20] tariff compare to the rates in the 400 series tariff?
 [21] A: It would be very difficult to compare. Most
 [22] of the special charges, such as we've mentioned, the
 [23] truck, car, stair carry, packing, unpacking, container
 [24] charges, those are pretty consistent. And, you get

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[1] into some of the other—many of the moves in state are
 [2] local moves and those are based on hourly rates. I
 [3] don't know how that moves from Lexington to Lexington,
 [4] Kentucky, and I refer that would be a local, how that
 [5] would compare to a move from Baltimore, Maryland to
 [6] Fairfax, Virginia, how that would compare, I have no
 [7] idea. I have not made a study in that regard.
 [8] Q: And, how do the rates in the Kentucky
 [9] Association tariff apply to the actual charges,
 [10] including discounts, that interstate movers charge for
 [11] interstate moves?
 [12] A: Again, the same answer. I'm not aware of any
 [13] comparisons being made.
 [14] Q: Who sets the rates in the 400 series tariff?
 [15] A: I'm assuming there's a joint tariff
 [16] publishing agency, I think we referred to that
 [17] earlier. I don't recall an exact name. But, they're
 [18] a tariff publishing agency that files their interstate
 [19] rates in the same manner that Kentucky carriers file
 [20] their rates with us through a joint tariff agency.
 [21] And, if your answer is, who files those interstate
 [22] rates, it's either the individual carrier or whoever
 [23] they've employed to file them for them.
 [24] Q: Who develops the level of the rates in the

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[1] 400 series tariff?
 [2] A: I would say it would be the carriers, the
 [3] Tariff Association that's filing that interstate rate.
 [4] And, whatever oversight the federal government would
 [5] have over what regulation they may have.
 [6] Q: How do they calculate the rates that appear
 [7] in the 400 series tariff?
 [8] A: I think I just answered that. If I haven't,
 [9] please ask me.
 [10] Q: How do they determine the level of the rates
 [11] to publish in that tariff?
 [12] MR. McMAHON: I'm going to object. Are you going
 [13] to qualify this witness as an expert? I'm confused to
 [14] what's going on here. You're examining him on the
 [15] methods and operations of Household Goods Carriers
 [16] Bureau?
 [17] MR. ABRAHAMSEN: Yes.
 [18] A: Well, again, my answer would be that that
 [19] would be the same as I've already said. Carriers or
 [20] van lines, in this case, have the option of filing or
 [21] publishing or documenting their rates. I do know they
 [22] have to be maintained. I don't think they have to be
 [23] filed. But, it would be a joint effort on the
 [24] carriers and whoever they've employed to help them

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[1] come up with a rate that they can have exposed to the
 [2] public. What format they use, how they come up with
 [3] that, I would not know. And, it is not part of my day
 [4] to day work to know that and to be knowledgeable in
 [5] the formatting of interstate rates.
 [6] Q: Do you know whether they have as their goal
 [7] to publish in the 400 series tariff rates that are not
 [8] excessive?
 [9] A: Well, unfortunately, I've already voiced my
 [10] opinion about the process, that I feel would be a
 [11] useless venture to have rates published and not
 [12] reviewed or over—have oversight. I'm going to be
 [13] very kind to my federal counterparts that might hear
 [14] my testimony, but to me, to have such a process, would
 [15] fall very, very short of the standards that we've
 [16] adopted in our state here. And, if they—how they're
 [17] published or how they're filed or if they're reviewed
 [18] or if they're based on guesses, I think it's
 [19] irrelevant, because the system allows them to charge
 [20] what they want to. And, if they've got a magic
 [21] procedure for setting rates, I wish they would share
 [22] it with us. But, my understanding, their goal is to
 [23] let the industry charge as they wish, charge whoever
 [24] they wish, whatever they wish and discriminate as they

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- [1] Q: —and on 2070—
[2] A: Correct.
[3] Q: —and on 2704?
[4] A: Correct.
[5] Q: And, as I understand these pages, and I'm
[6] looking now back at 2050, these—and perhaps it would
[7] be better if I just asked you to explain how this
[8] works. But, as I understand it, there is a price per
[9] 100 pounds of goods listed or there's a series of
[10] prices per 100 pounds of goods listed on, say for
[11] example, page 2050, is that correct?
[12] A: Correct.
[13] Q: And, those prices go up as the number of
[14] miles shipped go up, is that correct?
[15] A: That's correct.
[16] Q: And, then the price for the same number of
[17] miles goes down as the chart moves across the page
[18] left to right, based on increasing weight, is that
[19] correct?
[20] A: That's correct.
[21] Q: Who prepares the rates on this page 2050?
[22] A: Kentucky Household Goods Carriers
[23] Association—
[24] Q: And—

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- [1] accurately?
[2] A: Three or four a page. I don't get down into
[3] the—I usually get about to seventy scale, seventy to
[4] a hundred and pull three or four of them out, that's
[5] average. You don't see any hardly—you don't see any
[6] below fifty. You don't see very many above 300. So,
[7] I just get in the middle of the page and check some of
[8] them. Most of them are in the 4 to 800 pound bracket.
[9] So, it's not as difficult as it might look. Although
[10] I'm sure there might be some math errors that arrive
[11] based upon not checking and auditing every—but it has
[12] not been warranted to do that. Errors have not been
[13] located. So—I'm not saying they don't exist. But, I
[14] guess if someone instructs me to do the math—a
[15] verification of all of them, I would be happy to do
[16] that.
- [17] MR. ABRAHAMSEN: Let's take a break.
- [18] RECESS
- [19] Q: Could you please refer to KTC 107. And, I'm
[20] looking specifically at page KTC 2169. Is—there's a
[21] reference here to—well, let me, for the record just
[22] state that it's section (8) of the tariff, which is
[23] entitled exception to intrastate rates.
[24] A: Uh-huh. (Yes)

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- [1] A: —puts it in the format that it is here.
[2] Q: And, they submit it to you?
[3] A: Yes.
[4] Q: And, do you review it?
[5] A: Yes.
[6] Q: And, did you—do you examine these rates to
[7] see whether they have been increased five percent?
[8] A: I sample them. I don't do all of them, but I
[9] do sample them.
[10] Q: And, so, for instance on page 2050, how many
[11] rates are on that page?
[12] A: Do you want me to count them?
[13] Q: I believe there's eight—there's five rates
[14] in each box going down. There's eight boxes, so
[15] there's forty numbers going down and six across. So,
[16] I got 240 rates per page, does that sound—
[17] A: I'll take your word for it. I can count—as
[18] I said, I can count, if you'd like. But—
[19] Q: And, then we've gone through the—we went
[20] through the seven pages that—of rates, that would be
[21] included in the five percent increase in section (2)
[22] of the tariff. So, it's a large number of rates.
[23] Approximately how many do you sample to check to see
[24] whether the five percent increase has been done
- [1] Q: And, the second entry down is for Planes
[2] Moving and Storage, and it states that the rates
[3] published in section (2)(e), which would be the
[4] intrastate rates, is that correct?
[5] A: Uh-huh. (Yes)
[6] Q: When applicable will be increased twenty
[7] percent.
[8] A: Correct.
[9] Q: What—so how does that operate when this firm
[10] does a move?
[11] A: The rates are increased by, I believe, I
[12] recall they calculate the rate using the dollars per
[13] hundred weight and then that total figure is derived
[14] and they multiply it by twenty percent.
[15] Q: And, to your knowledge, is this still in
[16] effect?
[17] A: Yes.
[18] Q: And, what was the justification for Planes
[19] filing this exception?
[20] A: The same as the one right above it there,
[21] those are Cincinnati companies that are in a very high
[22] cost district and labor is much more expensive. North
[23] of the Ohio River, costs are extremely higher than the
[24] average in—within the state. And, I don't know if

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[1] that's the high—that was probably the highest rate
[2] published at that time, section (2)(e), that carrier
[3] does—just a point of fact, they do very, very little
[4] intrastate work. And, when they do intrastate work,
[5] they have additional costs of traveling down, that the
[6] in state folks do not have.

[7] Q: And, what was the nature of the justification
[8] that Planes submitted to the state in writing in terms
[9] of its costs?

[10] A: I don't specifically remember those.

[11] Q: Did you receive any information from Planes
[12] of a verbal nature to justify a twenty percent
[13] increase in their rates?

[14] A: I could very well have received something in
[15] writing. I just—I don't remember either one, either
[16] writing or verbally. But, I do know that—I generally
[17] recall why the costs was somewhat higher than the
[18] others is because of the justification they submitted
[19] over the years that—I don't know when this was filed.
[20] The last change on there was—well, there's been
[21] thirteen revisions of that page. So, it's hard to
[22] tell when that provision was started. I do know
[23] they've been—those last two are relatively new
[24] companies in the business. They've had a lot of—

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[1] excuse me, they're not new companies. They've had
[2] very frequent name changes, sale and transfer. So,
[3] those first two could have been in the tariff for some
[4] time. I don't really know when it would have been put
[5] in there.

[6] Q: Would the Planes Movers and Storage, would
[7] they—given that they have—that they may be operating
[8] in a higher cost region, would they be more profitable
[9] than a company who adhered to section (2)(e), who is
[10] moving in some other region of the State of Kentucky?

[11] A: I don't know.

[12] Q: The entry right above it is—maybe you could
[13] say the name, since I'm going to mispronounce it.

[14] A: Weil-Thoman.

[15] Q: And, Weil-Thoman, if I'm reading this
[16] correctly filed an exception so that they could charge
[17] thirty-eight percent more than the rates—the
[18] intrastate rates contained in section (2)(e) of the
[19] tariff, is that correct?

[20] A: That's correct.

[21] Q: And, what was the justification for that
[22] rate?

[23] A: I think when I answered your first question,
[24] I included both of those. And, I would say my—I

[1] would just repeat the same response. I included both
[2] of those entries as being Cincinnati based carriers.
[3] Both of them are based in a higher cost region. Both
[4] of them do very little Kentucky intra. But, I don't
[5] recall from memory what was submitted.

[6] Q: Why does Weil-Thoman increase the rates in
[7] (2)(e) by thirty-eight percent and Planes increases
[8] those rates by twenty percent, if they're both in the
[9] same region?

[10] A: I don't know that off the top of my head.

[11] Again, I don't know when they were published or—
[12] Planes may have put their increase in some time back.
[13] Weil-Thoman may have put theirs in more current. I
[14] just wouldn't know without—I do know those are older
[15] companies and likely those were made prior to December
[16] of 1999 and I doubt very seriously if we would have
[17] documentation in house to reflect what was actually
[18] filed.

[19] Q: At what level of increase in the rates in
[20] schedule (2)(e) would a mover in the Cincinnati, Ohio
[21] area need to publish before the rates would become
[22] excessive?

[23] A: I think the movers—let me—before I answer
[24] your question, let me explain something. The movers

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[1] have a wider scope of schedules that they elect to
[2] fall into. I'd have to look and see if those were
[3] available. But, if you're saying what percentage
[4] above, I'd have to consider where they are now. I
[5] would base the same criteria that I would on any other
[6] filing based upon what evidence they submitted, the
[7] reasons for the adjustments. I don't know if that
[8] answers your question or not.

[9] MR. ABRAHAMSEN: Let's go off the record.

OFF THE RECORD

[11] MR. ABRAHAMSEN: By previous agreement having to
[12] do with airplane flights for complaint counsel, we've
[13] agreed that we will stop this deposition now at 4:00
[14] o'clock so that I can catch my plane.

[15] I want to express my appreciation for Mr.
[16] Debord's two long days of sitting there being
[17] questioned.

[18] And, we will not close this record of this
[19] deposition because of the length of time both counsel
[20] used in questioning, we will review and see whether
[21] further questioning is appropriate. And, that was
[22] something that Mr. McMahon and I will work out in the
[23] very near future.

[24] Is that acceptable?

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- [1] **MR. McMAHON:** And, that is our agreement. I
[2] appreciate that.
[3] **MR. ABRAHAMSEN:** Thank you.
[4] And, we'll work it out, obviously, with Mr.
[5] Debord's schedule and any issues he has that he would
[6] —in order to accommodate him in any way.
[7] **MR. DEBORD:** Thank you.
[8] **MR. McMAHON:** Thank you, Mr. Director.
[9] **MR. ABRAHAMSEN:** Thank you.

[10] **FURTHER THIS DEPONENT SAITH NOT**

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[12]

CERTIFICATION OF REPORTER

DOCKET/FILE NUMBER: 9309

CASE TITLE: Kentucky Household Goods

HEARING DATE: November 14, 2003

I HEREBY CERTIFY that the transcript
contained herein is a full and accurate transcript
of the notes taken by me at the hearing in the
above styled cause of action before the Federal
Trade Commission to the best of my knowledge and
belief.

DATED: November 17, 2003

Melody L. Curtis

Reporter

CERTIFICATION OF PROOFREADER

I hereby certify that I proofread the
transcript for accuracy in content, spelling,
punctuation and format.

Juanita M. Toolie

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Kentucky Constitution

Section 196

Regulation of common carriers – No relief from common-law liability.

Transportation of freight and passengers by railroad, steamboat or other common carrier, shall be so regulated, by general law, as to prevent unjust discrimination. No common carrier shall be permitted to contract for relief from its common law liability.

Text as Ratified on: August 3, 1891, and revised September 28, 1891.

History: Not yet amended.

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EX. 4 "A"

281.010 Definitions for chapter.

As used in this chapter, unless the context requires otherwise:

- (1) The term "person" means any individual, firm, partnership, corporation, company, association or joint stock association, and includes any trustee, assignee, or personal representative thereof;
- (2) The term "cabinet" means the Kentucky Transportation Cabinet;
- (3) The term "department" means the Department of Vehicle Regulation;
- (4) The term "city" means a municipality incorporated under the laws of this state;
- (5) The term "state" means the Commonwealth of Kentucky;
- (6) The term "highway" means all public roads, highways, streets, and ways in this state, whether within a municipality or outside of a municipality;
- (7) The term "certificate" means a certificate of public convenience and necessity issued under this chapter to common carriers by motor vehicle and irregular route common carriers, a nonprofit bus certificate issued under this chapter authorizing operation thereunder, or a certificate of compliance;
- (8) The term "permit" means a permit issued under this chapter to contract carriers by motor vehicle of persons and to persons engaging in the business of U-drive-it;
- (9) The term "interstate commerce" means commerce between any place in a state and any place in another state;
- (10) The term "intrastate commerce" means commerce between any place in this state and any other place in this state;
- (11) The term "passenger" means an individual or group of people; and
- (12) The term "property" means general or specific commodities including hazardous and nonhazardous materials.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 346, sec. 1, effective July 14, 2000. -- Amended 1996 Ky. Acts ch. 174, sec. 1, effective July 15, 1996. -- Amended 1978 Ky. Acts ch. 232, sec. 2, effective June 17, 1978. -- Amended 1974 Ky. Acts ch. 74, Art. IV, sec. 20(2). -- Repealed and reenacted 1958 Ky. Acts ch. 130, sec. 1. -- Amended 1954 Ky. Acts ch. 188, sec. 1. -- Created 1950 Ky. Acts ch. 63, sec. 7, effective June 15, 1950.

History for former KRS 281.010: Repealed 1950 Ky. Acts ch. 63, sec. 57, effective June 15, 1950. -- Amended 1948 Ky. Acts ch. 57, sec. 1. -- Amended 1942 Ky. Acts ch. 185, sec. 1. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 2739j-1, 2739j-42, 2739j-94, 27391-9, 2730o-1.

EX. 4-B

281.011 Definitions for chapter.

As used in this chapter, unless the context requires otherwise:

- (1) The term "carrier" or "motor carrier" means any person who owns, controls, operates, manages, or leases, except persons leasing to authorized carriers, any motor vehicle for the transportation of persons or property for hire upon any highway, and any person who engages in the business of U-Drive-It. It shall include common and contract carriers by motor vehicle, city and suburban buses, holders of nonprofit bus certificates, driveaways and U-Drive-Its;
- (2) The term "motor vehicle" means any motor propelled vehicle used for the transportation of persons or property on a public highway, including any such vehicle operated as a unit in combination with other vehicles, and including vehicles propelled by electric power obtained from overhead wires whether operating over rails or otherwise;
- (3) The term "common carrier" means any person who holds himself out to the general public to engage in the transportation by motor vehicle of persons or property in intrastate or interstate commerce over regular or irregular routes, except that the holder of a nonprofit bus certificate shall not be construed to be a common carrier;
- (4) The term "irregular route common carrier" means any person who holds himself out to the general public to engage in the transportation of persons or property by motor vehicle over irregular routes in intrastate or interstate commerce;
- (5) The term "contract carrier" means any person who, under individual contracts or agreements, engages in the transportation by motor vehicle of passengers or property in interstate or intrastate commerce;
- (6) The term "driver" or "chauffeur" means the person physically operating the motor vehicle; and
- (7) The term "regular seat" means a seat ordinarily and customarily used by one (1) passenger and in determining such seating capacity the manufacturer's rating may be considered.

Effective: July 15, 1996

History: Amended 1996 Ky. Acts ch. 174, sec. 2, effective July 15, 1996. -- Amended 1978 Ky. Acts ch. 232, sec. 3, effective June 17, 1978. -- Amended 1974 Ky. Acts ch. 74, Art. IV, sec. 20(2). -- Amended 1970 Ky. Acts ch. 57, sec. 5. -- Amended 1962 Ky. Acts ch. 63, sec. 1. -- Created 1958 Ky. Acts ch. 130, sec. 2.

EX. 4- "C"

281.012 Definitions.

As used in this chapter, unless the context requires otherwise:

- (1) "Suburban area" means territory wholly within the State of Kentucky which extends not more than two (2) air miles beyond the corporate limits of any municipality except an urban-county and one (1) mile additional for each fifty thousand (50,000) population or major fraction thereof, and, where one (1) or more municipalities are contiguous or adjoining, the combined population of such contiguous or adjoining municipalities shall be considered in determining the suburban area of each such contiguous or adjoining municipality. Where all units of city and county government have been merged to form an urban-county government, "suburban area" means territory which extends not more than two (2) air miles beyond the corporate limits of any such unit of city government as fixed and established immediately prior to the effective date of the merger and one (1) additional mile for each fifty thousand (50,000) population or major fraction thereof of said city as determined by the last federal census prior to the effective date of the merger. Where one (1) or more units of city government were contiguous or adjoining prior to merger, their combined population as determined by the last federal census prior to the effective date of merger shall be considered in determining the suburban area of each such city. The department may, from time to time, upon a showing as hereinafter provided, authorize and permit the holder of a suburban bus certificate to extend its operations beyond the territorial limits of any such city or cities for a distance not to exceed ten (10) air miles, if said department finds:
 - (a) That the territory proposed to be served adjoins or is contiguous to said city; and
 - (b) That the territory proposed to be served has such density of population and that the physical, business, economic and social interest is such as to make it an integral part of the city as to which it adjoins or is contiguous and that it would be in the public interest and to the benefit of persons residing in said territory that they be served by the holder of a suburban bus certificate;
 - (c) Where the territory proposed to be served is within the boundaries of an urban-county the department will not consider the merger as a factor in determining whether such area is an integral part of the city to which it adjoins or is contiguous.
- (2) "Commercial area" means territory wholly within the Commonwealth which extends not more than two (2) air miles beyond the corporate limits of any municipality and one (1) mile additional for each fifty thousand (50,000) population or major fraction thereof, and, where one (1) or more municipalities are contiguous or adjoining, the combined population of such contiguous or adjoining municipalities shall be considered in determining the commercial area of each such contiguous or adjoining municipality. Where all units of city and county government have been merged to form an urban-county government, "commercial area" means territory which extends not more than two (2) air miles beyond the corporate limits of any such unit of city government as fixed and established immediately prior to the effective date of the merger and one (1) additional mile for each fifty thousand (50,000) population or

Ex. 4 - "D"

major fraction thereof of said city as determined by the last federal census prior to the effective date of the merger. Where one (1) or more units of city government were contiguous or adjoining prior to merger, their combined population as determined by the last federal census prior to the effective date of merger shall be considered in determining the commercial area of each such city. The department may, from time to time, upon a showing, as hereinafter provided, authorize and permit the holder of a certificate authorizing the transportation of property to extend its operations beyond the territorial limits of any such city or cities for a distance not to exceed ten (10) air miles, if said department finds:

- (a) That the territory proposed to be served adjoins or is contiguous to said city; and
- (b) That the territory proposed to be served has such density of population and that the physical, business, economic and social interest is such as to make it an integral part of the city to which it adjoins or is contiguous and that it would be in the public interest and to the benefit of persons residing in said territory that they be served by the holder of a certificate authorizing the transportation of property.
- (c) Where the territory proposed to be served is within the boundaries of an urban-county the department will not consider the merger as a factor in determining whether such area is an integral part of the city to which it adjoins or is contiguous.

History: Amended 1974 Ky. Acts ch. 74, Art. IV, sec. 20(2); and ch. 142, sec. 2, effective June 21, 1974. -- Created 1958 Ky. Acts ch. 130, sec. 3.

281.590 Declaration of policy.

It is hereby declared to be the public policy of this Commonwealth to provide for fair and impartial regulation of all transportation subject to the provisions of this chapter, so administered as to recognize and preserve the inherent advantages of each type of motor transportation; to promote safe, adequate, economical and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for such transportation service, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several states and the duly authorized officials thereof, all to the end of developing, coordinating and preserving a state transportation system by motor vehicles as defined in this chapter adequate to meet the needs of this Commonwealth. All of the provisions of this chapter shall be administered and enforced with the view to carry out the above declaration of policy.

Effective: June 15, 1950

History: Created 1950 Ky. Acts ch. 63, sec. 1, effective June 15, 1950.

EX. 4-E"

281.600 Administrative functions and powers of department.

The Department of Vehicle Regulation shall exercise all administrative functions of the state in relation to motor transportation as defined in this chapter, and shall apply, as far as practicable, the administrative and judicial interpretations of the Federal Motor Carrier Act. It shall have the right to regulate motor carriers as provided in this chapter, and to that end may establish reasonable requirements with respect to continuous and adequate service of transportation, systems of accounts, records and reports, preservation of records, and safety of operation and equipment. It may issue subpoenas, subpoenas duces tecum and orders of personal attendance of witnesses, and production of pertinent records, for any proceeding before it, and permit the taking of depositions, all in accord with the Rules of Civil Procedure and it shall have the power to promulgate administrative regulations as it may deem necessary to carry out the provisions of this chapter. The department shall have the authority to promulgate regulations regarding safety requirements for motor vehicles and the method of operation, including the adoption of any of the federal motor carrier safety regulations and any motor vehicle operating contrary to safety regulations shall be in violation of this section.

Effective: July 13, 1990.

History: Amended 1990 Ky. Acts ch. 466, sec. 7, effective July 13, 1990. -- Amended 1964 Ky. Acts ch. 74, Art. IV, sec. 20(2); and ch. 95, sec. 5. -- Amended 1962 Ky. Acts ch. 63, sec. 2. -- Created 1950 Ky. Acts ch. 63, sec. 6, effective June 15, 1950.

EX. 4-“F”

281.624 Household goods certificate.

- (1) The term "household goods certificate" means a certificate granting authority to operate as an irregular route common carrier transporting personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of the dwelling, and similar property if the transportation of the effects or property is:
 - (a) Arranged and paid for by the householder, including transportation of property from a factory or store when the property is purchased by the householder with intent to use in his or her dwelling; or
 - (b) Arranged and paid for by another party.
- (2) The department, in granting a motor carrier authority under KRS 281.630(1), shall have the right to designate the situs of the motor carrier's office and terminal facilities from which the carrier may operate. A designation shall not deny the motor carrier the use of its offices and terminal facilities in existence at the time of the grant of the authority. Any subsequent change of situs or additional situs shall only be granted after application by the motor carrier to the department in the same manner as other applications made under KRS 281.625.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 241, sec. 1, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 331, sec. 1, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 318, sec. 193, effective July 15, 1996. -- Amended 1974 Ky. Acts ch. 74, Art. IV, sec. 20(2); and ch. 167, sec. 1. -- Created 1970 Ky. Acts ch. 108, sec. 1.

EX. 4-5"

281.625 Hearing on application -- Notice -- Protest -- Exceptions.

- (1) (a) Upon the filing of an application for a certificate or permit or for amendment or for sale, transfer, or lease, or for change in route, or for abandonment of a certificate or permit, the department shall, within a reasonable time, fix the time and place for a hearing.
(b) The department shall mail written notice of the hearing, and the right to file a protest, in accordance with the regulations of the department and KRS Chapter 13B, to the applicant and every authorized carrier, including railroads, serving any part of the route proposed to be served or abandoned by the applicant. The department may also give similar notice to any other person, who, in the opinion of the department, may be interested in or affected by the granting of the application.
- (2) If a protest is filed, the department shall hold an administrative hearing on the application. The department, in its discretion, may hold a hearing if no protest is filed. Hearings conducted under this section shall be conducted in accordance with KRS Chapter 13B. Any person having interest in the subject matter may, in accordance with the regulations prescribed therefor, file a protest to the granting, in whole or in part, of the application.
- (3) If the application is for a nonprofit bus certificate and no protest is filed, the department may grant the certificate without a hearing, provided the provisions of subsection (3) of KRS 281.630 or KRS 281.801 are met.
- (4) The department may, if the application is solely for rights previously granted by the Interstate Commerce Commission, dispense with the holding of a hearing.
- (5) Persons engaged in the transportation in interstate commerce in Kentucky of any commodity exempted by the Interstate Commerce Commission from regulation shall be subject to the same Kentucky requirements and regulations as if the persons were transporting commodities not exempted by the Interstate Commerce Commission, except that in lieu of filing or registering with the department a certificate of public convenience and necessity as issued by the Interstate Commerce Commission, the persons shall apply to the department for a permit or certificate restricted to interstate commerce and the permit or certificate may be issued without a hearing.
- (6) If an applicant has been granted an irregular route common carrier certificate by the Interstate Commerce Commission, the department may grant an irregular route common carrier certificate restricted to operation in interstate commerce, and on the granting of same, it shall notify the Revenue Cabinet of the applicant's operation.
- (7) The department may grant a permit, upon application, to operate a U-drive-it without the holding of a hearing.

Effective: July 15, 1996

History: Amended 1996 Ky. Acts ch. 174, sec. 6, effective July 15, 1996; and ch. 318, sec. 194, effective July 15, 1996. -- Amended 1978 Ky. Acts ch. 232, sec. 7, effective June 17, 1978. -- Amended 1974 Ky. Acts ch. 74, Art. IV, sec. 20(2). -- Amended 1966 Ky. Acts ch. 255, sec. 228. -- Amended 1964 Ky. Acts ch. 95, sec. 10. -- Amended 1958 Ky. Acts ch. 130, sec. 9. -- Amended 1954 Ky. Acts ch. 188, sec. 4. -- Created 1950 Ky. Acts ch. 63, sec. 12, effective June 15, 1950.

Ex. 4 - "A"

Legislative Research Commission Note (7/15/96). This section was amended by 1996 Ky. Acts chs. 174 and 318. Where these Acts are not in conflict, they have been codified together. Where a conflict exists between Acts ch. 174 and a nonsubstantive, stylistic amendment in Acts ch. 318, Acts ch. 174 prevails under Acts ch. 318, sec. 358.

281.675 Standards of certificate holder's rates and services.

- (1) Every rate, fare and charge demanded or received by any certificate holder shall be just and reasonable, and every holder of a certificate shall furnish adequate, efficient, safe and reasonable service.
- (2) Every contract made by a contract carrier for transportation service shall be just and reasonable, and shall be comparable to the rate charged by any common carrier for the same or similar service, and such contract carrier shall furnish adequate, efficient, safe and reasonable service.

Effective: June 17, 1978

History: Amended 1978 Ky. Acts ch. 232, sec. 10, effective June 17, 1978. -- Amended 1972 Ky. Acts ch. 269, sec. 2. -- Amended 1958 Ky. Acts ch. 130, sec. 13, effective July 1, 1958. -- Created 1950 Ky. Acts ch. 63, sec. 22, effective June 15, 1950.

EX. 4-I

281.680 Filing and public inspection of rate and service schedules and contracts -- Collective ratemaking procedures.

- (1) Under administrative regulations promulgated by the department under KRS Chapter 13A, every common carrier or irregular route common carrier of passengers or household goods, except carriers operating pursuant to a taxicab certificate, a disabled person's vehicle certificate, a limousine certificate, an airport shuttle certificate, or an industrial bus certificate, shall maintain on file with the department a schedule of rates, fares, charges, and classifications, and a time schedule, if any, of all motor vehicles operated under a certificate, and shall keep open for public inspection at designated offices so much of such schedules as the department deems necessary for public information. The carriers may become a participating party to a tariff published or issued by a tariff-issuing agency, and the issuing agent of the tariff shall file the tariff with the department, but such tariff-issuing agent may not represent any carrier in any matters before the department. Notwithstanding the exclusion of carriers operating pursuant to a taxicab certificate, a disabled person's vehicle certificate, a limousine certificate, an airport shuttle certificate, or an industrial bus certificate, the department may by administrative regulation require carriers to file a schedule of their rates, fares, charges, and classifications.
- (2) Under administrative regulations promulgated by the department under KRS Chapter 13A, every contract carrier shall maintain on file with the department all contracts made for transportation, and shall keep open for public inspection at designated offices such contracts as the department deems necessary for public information.
- (3) The department shall have full power concerning the control of rates and contracts under its administrative regulations.
- (4) To ensure nondiscriminatory rates, charges, and classifications for all shippers and users of regulated transportation services for which the department prescribes rates, charges, and classifications, the department shall establish collective ratemaking procedures for all commodities and services for which it prescribes rates, charges, and classifications. The procedures shall assure that respective revenues and costs of carriers engaged in the transportation of the particular commodity or service, for which rates are prescribed, are ascertained.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 331, sec. 3, effective July 15, 1998. -- Amended 1984 Ky. Acts ch. 160, sec. 1, effective July 13, 1984. -- Amended 1974 Ky. Acts ch. 74, Art. IV, sec. 20(2). -- Amended 1972 Ky. Acts ch. 269, sec. 3. -- Amended 1966 Ky. Acts ch. 139, sec. 28. -- Amended 1962 Ky. Acts ch. 63, sec. 6. -- Amended 1958 Ky. Acts ch. 130, sec. 14. -- Created 1950 Ky. Acts ch. 63, sec. 23, effective June 15, 1950.

EX. 4 - "J"

281.685 Adherence to rates, fares, charges, and schedules -- Prohibition against discrimination.

- (1) A common carrier or irregular route common carrier of passengers or household goods shall not charge, demand, collect, or receive a greater, less, or different compensation for the transportation of persons or property or for any service in connection therewith, than the rates, fares, and charges specified in its tariffs and classifications filed with the department and in effect at the time; and a common carrier or irregular route common carrier shall not refund or remit any part of the rates, fares, or charges so specified, or make or give any unreasonable preference or advantage to any person, or subject any person to any unreasonable discrimination.
- (2) A contract carrier shall not charge, demand, collect, or receive a greater, less, or different compensation for the transportation of persons or for any service in connection therewith than that contained in the contract required to be filed with the department and in effect at the time; and a contract carrier shall not refund or remit any part of the charges specified in the contract, or make or give any unreasonable preference or advantage to any person, or subject any person to any unreasonable discrimination.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 331, sec. 4, effective July 15, 1998. -- Amended 1958 Ky. Acts ch. 130, sec. 15. -- Created 1950 Ky. Acts ch. 63, sec. 24, effective June 15, 1950.

EX. 4 - "K"

281.690 Changes in rates.

- (1) A common carrier or irregular route common carrier of passengers or household goods shall not make any change in any rate that has been duly established under this chapter except after thirty (30) days' notice to the department, which notice shall state plainly the changes proposed to be made and the proposed effective date of the change. The carrier shall also give notice of the proposed change to other interested persons in the manner as the department directs in its administrative regulations. All proposed changes shall be shown by filing new tariffs in the form and manner prescribed by the department. The department may, in accordance with administrative regulations and upon the showing of good cause, provide for the allowance of a change in rates by holders of certificates authorizing only transportation of property upon notice less than that specified in this subsection.
- (2) Whenever any tariff setting forth a change in rates is filed, the department may, upon its own initiative, and shall, upon protest filed in accordance with the administrative regulations of the department, enter upon a hearing, to be conducted in accordance with KRS Chapter 13B, concerning the lawfulness of the proposed rate. The department shall mail written notice of the hearing to the applicant, the protestant, and to any other person who, in the opinion of the department, may be interested in or affected by the proposed change in rate. The department may suspend the operation of the new rates for a period of not more than six (6) months from the proposed effective date by order, giving reasons therefor. If after the hearing the department finds the proposed rate, or any part thereof, to be unjust, unreasonable, or unjustly discriminatory, or in violation of law, the department shall determine the just and reasonable rate to be charged and shall fix the same by final order.
- (3) A contract carrier shall not make any change in its contract filed with the department except upon the approval of the department.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 331, sec. 5, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 318, sec. 202, effective July 15, 1996. -- Amended 1958 Ky. Acts ch. 130, sec. 16. -- Amended 1954 Ky. Acts ch. 188, sec. 8. -- Created 1950 Ky. Acts ch. 63, sec. 25, effective June 15, 1950.

EX. 4 - "L"

281.695 Powers of Department of Vehicle Regulation to regulate rates and service.

- (1) The department has authority to fix or approve the rates, fares, charges, classifications, rules, and regulations of each common carrier, and to regulate operating schedules so as to insure adequate and convenient transportation service. If the department, after a hearing held upon its own motion or upon complaint, and in accordance with KRS Chapter 13B, finds any existing rate to be excessive, inadequate, unreasonable, or unjustly discriminatory, or finds the services rendered or facilities employed by any common carrier to be unsafe, inadequate, inconvenient, or in violation of law or of the administrative regulations of the department, it may determine the just and reasonable rate to be charged therefor, or the reasonable, safe, adequate, and convenient service to be thereafter furnished, and shall fix the same by final order. The department need not fix the same rates as are or may be fixed by other authorities for carriers engaged in other methods of transportation.
- (2) The department has authority to fix or approve the contracts and regulations of each contract carrier so as to insure adequate and convenient transportation service. If the department, after a hearing held as provided in subsection (1) of this section, finds any existing contract to be excessive, unreasonable, or unjustly discriminatory, or finds the services rendered or facilities employed by any contract carrier to be unsafe, inadequate, inconvenient, or in violation of law or of the administrative regulations of the department, it may determine the just and reasonable amounts to be charged therefor, or the reasonable, safe, adequate, and convenient service to be thereafter furnished, and shall fix the same by final order.

Effective: July 15, 1996

History: Amended 1996 Ky. Acts ch. 318, sec. 203, effective July 15, 1996. -- Created 1950 Ky. Acts ch. 63, sec. 26, effective June 15, 1950.

EX. 4 - "M"

281.705 Accounts -- Reports.

The department may prescribe uniform systems of accounts and the filing of reports by motor carriers.

Effective: June 15, 1950.

History: Created 1950 Ky. Acts ch. 63, sec. 28, effective June 15, 1950.

Ex. 4 - "N"

281.900 Kentucky Motor Carrier Advisory Committee -- Membership.

- (1) The Kentucky Motor Carrier Advisory Committee is created as an agency of the Commonwealth to carry out the functions and duties conferred upon it by KRS 281.905.
- (2) The committee shall consist of the secretary of the Transportation Cabinet, the secretary of the Revenue Cabinet, the Speaker of the House, the President of the Senate, or their respective designated representatives, and nine (9) representatives of the motor carrier industry engaged in operations in the Commonwealth in the transportation of persons or property.
- (3) On July 15, 1990, the Governor shall appoint the motor carrier industry representative to the committee. Members shall be appointed by the Governor for three (3) years, except that initial appointments to the board shall be staggered in the following manner:
 - (a) Three (3) members shall serve for a period of one (1) year;
 - (b) Three (3) members shall serve for a period of two (2) years; and
 - (c) Three (3) members shall serve for a period of three (3) years.
- (4) Motor carrier industry representatives of the committee shall qualify for membership by taking the constitutional oath of office and shall be provided with certificates of appointments. The members of the committee shall serve without per diem or compensation.

Effective: July 15, 1996

History: Amended 1996 Ky. Acts ch. 194, sec. 62, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 486, sec. 34, effective July 15, 1994. -- Created 1990 Ky. Acts ch. 107, sec. 1, effective July 13, 1990.

EX. 4 - "O"

601 KAR 1:029. Definitions relating to 601 KAR 1:030 through 601 KAR 1:145.

RELATES TO: KRS Chapter 281, 281.600 through 218.763, 281.790 through 281.860

STATUTORY AUTHORITY: KRS 281.600

NECESSITY, FUNCTION, AND CONFORMITY: To assure uniformity of all terminology in the administrative regulations relating to motor carriers.

Section 1. (1) The definitions set forth in KRS 281.010-281.014 shall have the same meaning and effect in the administrative regulations of the Transportation Cabinet which relate to motor carriers: 601 KAR 1:030 through 601 KAR 1:145.

(2) "Approval" means written approval.

(3) "Authorized carrier" means a person duly qualified with the cabinet to engage in the transportation of persons or property for hire in either interstate commerce, or intrastate commerce in Kentucky, or both.

(4) "Delivery" means handing the legal document or paper to the attorney or to the party; or leaving it at his office with the person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein, or if the office is closed, or the person to be served has no office, leaving it at his dwelling house or his place of abode with some person of suitable age and discretion then residing therein.

(5) "Filing" means the receipt of a signed or attested document in the Transportation Cabinet, Division of Hearings, at 501 High Street, Frankfort, Kentucky, during regular office hours.

(6) "Manifest" means a complete listing of all shipments on a truck. The manifest shall refer to the freight bill of each shipment by individual pro number, and show the weight of each shipment and the origin and destination of each shipment.

(7) "Party" means either an applicant, complainant, respondent, or a person who has filed a protest in accordance with 601 KAR 1:030.

(8) "Property" means general commodities, both hazardous and nonhazardous, excluding household goods and passengers.

(9) "Qualified equipment" means a motor vehicle duly and currently registered and licensed for the transportation of persons or property for hire in intrastate commerce in Kentucky by an authorized carrier who may properly conduct such transportation.

(10) "Restrictive amendment" means an amendment to an application which limits the scope of the original application.

(11) "Service" when regarding a legal document or paper means the delivery of a copy to the other party or his attorney, or by mailing it to him at his address of record. (17 Ky.R. 165; Am. 1062; eff. 9-4-90; 18 Ky.R. 2691; eff. 4-3-92; 22 Ky.R. 1719; 2295; eff. 6-6-96.)

EX. 4 - "P"

601 KAR 1:030. Hearings.

RELATES TO: KRS 281.625, 281.626, 281.630, 281.632, 281.635, 281.637, 281.640, 281.665, 281.670, 281.684, 281.690, 281.695, 281.801, 49 USC 14501(A)(2)

STATUTORY AUTHORITY: KRS 281.600

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281.625 requires the department to conduct hearings on applications for authority to operate motor carriers in the Commonwealth. The states' authority to regulate transporters of passengers or property is restricted by 49 USC 14501(A)(2) to intrastate transport only. This administrative regulation establishes guidelines for conducting hearings pursuant to KRS Chapter 13B and KRS 281.625.

Section 1. (1) Application to be heard together. Applications shall be set for a hearing at the earliest statutorily-permissible date convenient to the cabinet.

(2) A consolidated hearing shall be held if:

- (a) More than one (1) application has been filed seeking a certificate or permit to provide transportation services over the same route or any part thereof;
- (b) One (1) or more than one (1) application seeking the same or similar authority, has been filed prior to the issuance of notices of a hearing on any of the applications; or
- (c) 1. A similar application is filed after hearing notices have been issued, but prior to the hearing date; and
- 2. The hearing officer determines that consolidation would not jeopardize the rights of a party or the efficiency of the process.

(3) Road conditions.

- (a) The cabinet may refuse to call a hearing on an application to authorize operations over a highway that, at the time of the application, has not been opened for use by the general public.
- (b) A hearing shall be called when the highway in question is open for traffic or shall be opened for traffic within sixty (60) days.
- (c) If, at a hearing called on an application, it is determined that the highway is not open for traffic and will not be opened for traffic within sixty (60) days of the date of the hearing, the cabinet may:
 - 1. Proceed with the hearing; or
 - 2. Dismiss the hearing with the provision that a hearing de novo will be called when it is determined that the road is open for traffic or will be opened for traffic within sixty (60) days.

Section 2. Notice by Cabinet Regarding Application to Transport Household Goods or Passengers. (1) After the cabinet has received an application for operating authority pursuant to KRS Chapter 281 and 601 KAR 1:040, the cabinet shall send a notice of application to all known, required and interested parties.

(2) The notice shall contain the following:

- (a) A statement that a hearing will be scheduled at a later date, convenient to the parties, if protest is filed;
- (b) A complete description of the authority sought and the matter to be heard;
- (c) The name and address of the applicant;
- (d) The docket number assigned to the matter by the cabinet;
- (e) A statement that anyone having an interest in the matter may file a protest or other proper pleading in accordance with KRS 281.265(2) and this administrative regulation;
- (f) If applicable, the name and address of the attorney representing the applicant; and
- (g) A statement that notice of protest must be filed within thirty (30) days from service of notice in order to be valid.

(3) The cabinet shall send a notice of receipt of an application for a particular type of authority to each:

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(a) Holder of a certificate or permit granting the same or similar authority;

(b) Other applicant for the same or similar authority; and

(c) Person or entity designated in KRS 281.625(1)(b).

(4)(a) If the applicant requests authority for an airport shuttle service, the cabinet shall serve notice on all airport shuttle services, limousines, and taxicabs operating in the county for which authority is sought;

(b) If the applicant requests authority to operate a bus whether common carrier, suburban, city, industrial, or nonprofit, the cabinet shall serve notice on all taxicabs and limousines with a situs in the proposed bus service area and all buses in the state;

(c) If the applicant requests authority to operate a common carrier limousine, the cabinet shall serve notice on all airport shuttle services, limousines and taxicabs in the county for which the certificate is sought;

(d) If the applicant requests authority to operate a common carrier taxicab, the cabinet shall serve notice on all airport shuttle services, limousines and taxicabs with operating authority in the county for which the certificate is sought; and

(e) If the applicant requests authority to operate a household goods carrier, the cabinet shall notify all household goods carriers.

(5) The cabinet shall consult with the parties and schedule an administrative hearing to be held pursuant to the provisions of KRS Chapter 13B and shall send a notice of hearing pursuant to KRS 13B.050 if:

(a) The department receives a protest or other pleading in response to the notice of application;

(b) The department determines that a hearing is necessary even though a protest or other pleading was not received in response to the notice of application;

(c) The department receives a request to hold a hearing on a complaint received;

(d) The department receives a request to hold a hearing pursuant to KRS Chapter 281; or

(e) As indicated by 601 KAR 1:095.

(6) The notice of hearing shall include:

(a) Information required by KRS 13B.050(3); and

(b) A docket number assigned by the cabinet.

Section 3. Notice of Change in Route. (1) A regular route bus, other than a city bus, which proposes a change in route or an abandonment of any route shall:

(a) Give detailed notice of its proposed action to all competing and connecting carriers;

(b) Publish once a week for three (3) consecutive weeks an advertisement in a sufficient number of newspapers of general circulation to cover the territory affected by the change sought.

(2) The advertisements required in subsection (1) of this section shall clearly indicate the following:

(a) The proposed change;

(b) The proposed effective date of the change; and

(c) That any person desiring to protest may do so by filing a protest with the cabinet in accordance with Section 4 of this administrative regulation.

(3) The first required notice shall be published on or before the date on which the application is filed with the cabinet;

(4) The second and third required notice shall be published during the next two (2) succeeding calendar weeks.

(5)(a) Not later than ten (10) days subsequent to the third publication of the advertisement, the applicant shall file with the cabinet an affidavit, stating that the required notice has been given.

(b) The affidavit shall be accompanied by a copy or copies of the advertisements.

Section 4. Protests and Other Pleadings. (1) General.

(a) All protests, pleadings, motions and other papers filed with the cabinet shall be typewritten and double-spaced on white eight and one-half (8 1/2) inches by eleven (11) inches paper, properly styled with the matter to which they are relative, and the docket number assigned thereto by the cabinet, if any.

(b) Any protests, pleadings, motions, or other papers may be printed and, if printed, need not be double-spaced.

(c) Pleadings, protests, motions, or other papers filed by the parties represented by an attorney shall be signed by at least one (1) attorney of record in his individual name and shall state his address.

(d) Except when specifically provided otherwise, pleadings need not be verified or accompanied by an affidavit.

(e) The attorney's signature shall constitute a certification that he has read the matter; that to the best of his knowledge, information, and belief the statements contained therein are true; and that it is not interposed for delay.

(f) If the matter is not signed or is signed with the intent to defeat the purpose of this administrative regulation, it may be stricken as sham and false, and the matter may proceed as though there had been no filing.

(g) All protests shall state the ground of the protest.

(h) That which is not filed in conformance with the requirements of this subsection shall not be considered or accepted as a matter of record.

(2) **Filing.** The cabinet shall mark, on the document, the date and time of filing a protest or any other document, in accordance with KRS 13B.080(2). If the date on which any protests, pleadings, motions or other papers shall be filed is Saturday, Sunday, or a legal holiday, the date for filing shall be the close of the next regular business day of the cabinet.

(3) **Time of filing protests.** A protest shall be filed with the cabinet within thirty (30) days from the date notice of application is served except:

(a) A protest to a time schedule change shall be filed not later than five (5) days before the effective date of the proposed time schedule change;

(b) A protest to a proposed change in the existing tariff of carriers of household goods shall be filed not later than fifteen (15) days after the proposed tariff change is filed with the cabinet;

(c) A protest to a proposed change in existing fares of carriers of passengers shall be filed at least ten (10) days before the proposed effective date of the proposed change.

(4) **Service of pleadings and other papers.** Any person who files a protest, pleading, complaint or other paper, shall serve a copy thereof upon the applicant, respondent, or initiating party and shall certify to the cabinet that the service has been accomplished.

(5) **Withdrawal.** Any person who desires to withdraw an application, protest, pleading or other paper may do so upon written notice to the cabinet and to the interested parties as soon as possible. A notice of withdrawal shall be in conformance with the requirements of this administrative regulation.

(6) **Replies to protests.** If a protest to a proposed change in the existing tariff of a carrier of property is filed, the carrier requesting the proposed change may file a reply to the protest within ten (10) days of the filing of the protest.

(7) If no protests or other pleadings are filed within the time prescribed, the cabinet may determine the case on the basis of affidavits. The procedure to be followed is set forth in 601 KAR 1:031.

Section 5. Continuances. (1) All hearings shall be held on the day set in the notice of hearing issued by the cabinet. A change in the hearing date shall not be made except:

(a) Upon agreement of all interested parties with approval of the hearing officer; or

(b) Upon order of the hearing officer for any reasons deemed necessary or advisable.

(2) If the continuance is granted after the original hearing notice has been served, the hearing may be reset at any time provided that notice of the new hearing date is served on all parties not less than ten (10) days prior to the new hearing date. The ten (10) day notice may be waived by agreement of all parties.

Section 6. General Practice. (1) Appearances. If an applicant or protestant fails to appear at a hearing on the application, the hearing officer shall proceed in accordance with KRS 13B.080(6). If an application is denied or dismissed pursuant to KRS 13B.080(6), a similar application by the same applicant shall not be entertained until six (6) months have elapsed.

(2) Adjournment. The hearing may be adjourned to a future day for just cause shown, or with consent of the parties, or by order of the hearing officer.

(3) Service on attorney. When a party has appeared by an attorney, all communications, notices, pleadings, and other formal documents shall be sent to the attorney. Service on the attorney shall be considered as service on the party. The party shall notify the cabinet and other parties of any change in attorney.

(4) Evidence. The hearing officer shall admit evidence in accordance with KRS 13B.080 and 13B.090.

(5) Prepared statements. Prepared sworn statements may be received in evidence, but copies thereof shall have been furnished to the hearing officer, reporter, and all parties a reasonable time before their receipt into evidence, so that any objections may be made before the statements are made a part of the record.

(6) Exhibits. All exhibits filed during a hearing shall be furnished to each party, unless otherwise ordered by the hearing officer.

(7) Transcript.

(a) Recording and transcription of a hearing is governed by KRS 13B.090(6).

(b) The cabinet shall not issue a recommendation or final order until it receives the original transcription of all hearings related to the case.

(8) Exclusion of witnesses. Upon request of a party or on the hearing officer's own motion, witnesses may be excluded from the hearing room. Principals including owners, officers, partners, or directors may remain in the hearing room subject to the approval of the hearing officer.

(9) Subpoenas. In accordance with KRS 13B.080(3), an applicant, protestant, or other party, who desires to summon and compel the attendance at any hearing of any witness or witnesses, or who desires the production in evidence of any books, records, papers, etc., shall request from the hearing officer a subpoena or a subpoena duces tecum or orders of personal attendance.

Section 7. Briefs. (1) In accordance with KRS 13B.080, the cabinet may receive briefs:

(a) If a party requests opportunity to submit a brief and is allowed to do so by the hearing officer; or

(b) If the hearing officer requires the filing of briefs.

(2) If a brief is submitted, the opposition may respond. Every brief or response shall become part of the official record of the proceeding as required by KRS 13B.130.

(3) The time for filing of briefs and responses shall be set by the hearing officer at:

(a) The close of the hearing; or

(b) During the prehearing conference.

Section 8. Restrictive Amendments. (1) An applicant may offer a restrictive amendment to an application prior to, during, or after any hearing held on an application.

(2) The amendment offered shall be:

(a) Reasonable;

(b) Enforceable;

(c) Consistent with the public interest; and

(d) 1. In compliance with Section 4 of this administrative regulation, if submitted in writing; or

2. On the record, if offered during a hearing.

(3) The Commissioner of Vehicle Regulation or a properly-designated representative of the commissioner shall accept or reject a proposed restrictive amendment.

(4) The Commissioner of Vehicle Regulation shall provide a copy of an order accepting or denying a restrictive amendment request to the applicant, protestants, and other parties to the proceedings.

Section 9. Report and Recommended Order. The hearing officer shall submit a report and recommended order in compliance with KRS 13B.110.

Section 10. Exceptions and Replies Thereto. (1) A party to a hearing may, in accordance with KRS 13B.110(4), file and serve exceptions to the report and recommended order.

(2) The exceptions shall conform to the requirements of Section 4 of this administrative regulation.

(3) Exceptions shall consist of as many objections to the whole or any part of the report as the party filing the exception desires to make, with each objection numbered.

(4) The party filing exceptions shall fully state the grounds for each one.

(5) Replies to exceptions shall be filed within fifteen (15) days after service of the exceptions, if any party desires to make a reply.

(a) The reply shall conform to the requirements of Section 4 of this administrative regulation.

(b) The reply shall consist of a separate reply to each objection set out in the exception.

Section 11. Final Order. (1) The Commissioner of Vehicle Regulation shall constitute the head of the agency for purposes of:

(a) KRS 13B.030(1), Powers of agency head; and

(b) KRS 13B.120, Final order.

(2) Until the cabinet has approved a change or modification of a certificate granted by final order of the commissioner, a carrier shall operate according to the time schedule and schedule of rates, fares, and charges granted by that final order. (DMT-16; 1 Ky.R. 782; eff. 5-14-75; Am. 18 Ky.R. 2692; eff. 4-3-92; 22 Ky.R. 1720; 2295; eff. 6-6-96; 28 Ky.R. 463; 863; eff. 10-2-2001.)

601 KAR 1:040. Application for operating authority and registration of motor carriers.

RELATES TO: KRS Chapter 281, 281.014, 281.615, 281.618, 281.619, 281.620, 281.625, 281.637, 281.650, 281.660, 281A.010(8), 49 CFR Part 367

STATUTORY AUTHORITY: KRS 281.600, 281.620, 281.752, 49 CFR Part 367, 49 USC 14501

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation describes the application procedure for intrastate operating authority in the Commonwealth and the registration procedure for interstate motor carriers operating in Kentucky pursuant to authority granted by the United States Department of Transportation.

Section 1. Kentucky Intrastate Passenger or Household Goods Authority. (1)(a) An application for operating authority to engage in Kentucky intrastate commerce relating to the transportation of persons except for charter bus transportation or household goods shall be made on the following appropriate forms:

1. Transportation Cabinet form TC 93-10, Application for Operating Authority, Household Goods, revised April 1999;
2. Transportation Cabinet form TC 93-11, Application for Operating Authority, Disabled Persons Carrier, revised April 1999;
3. Transportation Cabinet form TC 93-12, Application for Operating Authority, Bus and Airport Shuttle, revised April 1999;
4. Transportation Cabinet form TC 93-13, Application for Operating Authority, City Limousine and Taxi, revised April 1999; or
5. Transportation Cabinet form TC 93-15, Application for Operating Authority, County Limousine and Taxi, revised April 1999.

(b) The application shall be accompanied by a filing fee of twenty-five (25) dollars.

(c) All applications and exhibits shall be filed with answers typewritten or printed legibly in ink. Each question shall be fully answered and all instructions with the application shall be read and fully complied with.

(2)(a) If the applicant is a corporation, a copy of the corporation's certificate of good standing from the Secretary of State in the jurisdiction in which it was incorporated shall be submitted with the application.

(b) This certification shall not be more than thirty (30) days old at the time the application is submitted to the Transportation Cabinet.

(c) If the applicant is a foreign corporation, a Kentucky process agent shall be listed.

(3) The application shall be accompanied by the applicant's financial statement prepared in accordance with 601 KAR 2:010.

(4)(a) An application shall be sworn to by the applicant or a responsible official acting for the applicant.

(b) A hearing shall not be called or authority issued upon an incomplete application.

Section 2. Temporary Authority Applications. (1)(a) An application for temporary authority shall be made to the Transportation Cabinet by petition.

(b) The petition shall set forth the facts relied on by the applicant as showing an immediate and urgent need for the authority sought.

(c) All existing carriers having authority to perform the proposed service between any of the points sought in the petition shall be fully identified and the authority of each as affected by the application shall be stated.

(d) 1. The applicant shall have the burden of proof in showing that any existing carriers with authority are not capable of meeting the need for service.

2. In lieu of meeting this burden, the applicant may file a waiver from each carrier authorized to serve the area sought or any part thereof in the form of a letter from each carrier waiving any objection to the temporary grant of authority.

(2) There shall also be filed with the petition a verified statement. The supporting statement shall contain at least the following information:

(a) Name and address of the motor carrier who has filed the application for temporary authority;

(b) Statement of character and reputation of the applicant and a brief history of the applicant's work history, including any experience in providing transportation services;

(c) Name, address and interest of each person filing a supporting affidavit;

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- (d) A statement of how the transportation service, if any, is now obtained and how it was obtained in the past;
 - (e) A statement of when the transportation service is needed and the reasons why the need is immediate and urgent;
 - (f) An estimate of how long the need for the transportation service will continue and a statement that the person making the supporting statement would support a permanent service application;
 - (g) A statement of the consequences if this transportation service is not made available; and
 - (h) A statement of incidents where efforts have been made to obtain the service from existing motor carriers and the dates and results of these efforts; name and address of all existing carriers who have either failed or refused to provide the service; and the reasons given for the failure or refusal.
- (3) The department may issue temporary authority without following any of the requirements listed above if one (1) of the following conditions exists:
- (a) There are no existing carriers with authority within the scope and area of the application;
 - (b) All existing carriers with authority within the scope and area of the application issue waivers for the issuance of temporary authority;
 - (c) There are unusual and emergency conditions; or
 - (d) The application is for temporary approval under KRS 281.632(2).

(4) If no application for corresponding permanent authority is made, an application for temporary authority shall be accompanied by a filing fee of twenty-five (25) dollars and the financial statement of the applicant prepared in accordance with 601 KAR 2:010.

Section 3. Application for Approval of Transfer of Certificate or Permit. (1)(a) An application for approval to transfer a certificate or permit issued by the Transportation Cabinet authorizing Kentucky intrastate commerce shall be accompanied by a filing fee of twenty-five (25) dollars.

(b) The application shall be made on "Application for Approval of Transfer of Certificate of Permit" form TC 93-17, effective April 1997.

(c) All applications and exhibits shall be filed with answers typewritten or printed legibly in ink. Each question shall be fully answered and all instructions with the application shall be read and fully complied with.

(2)(a) When the applicant is a corporation, a copy of the corporation's certificate of good standing from the Secretary of State in the jurisdiction in which it was incorporated shall be submitted with the application. This certification shall not be more than thirty (30) days old at the time the application is submitted to the department.

(b) If the applicant is a foreign corporation, a Kentucky process agent shall be listed.

(3)(a) The application shall be accompanied by the transferee's financial statement prepared in accordance with 601 KAR 2:010.

(b) An application shall be sworn to by the applicant or a responsible official acting for the applicant.

(c) A hearing shall not be called or authority issued upon an incomplete application.

(4) A copy of the executed transfer agreement and a copy of the certificate or permit sought to be transferred shall accompany the application.

(5) If the application is for the transfer of contract carrier authority, a copy of the contract to be transferred and a duly executed assignment by the original shipper shall be attached to the application.

Section 4. Interstate Operating Authority - For-hire Motor Carriers. (1) 49 CFR Part 367 revised October 1, 2001, shall govern the registration of the for-hire motor carriers which meet the following criteria:

(a) Those whose principal place of business is Kentucky; and

(b) Those which are operating in interstate commerce.

(2) The "Procedure Manual for the Single State Registration System" prepared by the National Conference of State Transportation Specialists and effective July 12, 1993 shall govern the procedures of the Department of Vehicle Regulation in the registration of for-hire motor carriers operating in interstate commerce.

(3) A motor carrier which maintains its principal place of business in Kentucky shall apply to the Department of Vehicle Regulation for registration pursuant to 49 CFR Part 367.

(4) The Kentucky fee for the issuance of the registration receipt required by the "Procedure Manual for the Single State Registration System" shall be ten (10) dollars per motor vehicle.

Section 5. Contract Bus Carrier Permit; Intrastate. (1) Each application for authority as an intrastate contract bus carrier shall include two (2) copies of the contract under which the applicant desires to operate.

(2) The contracts shall be executed by the applicant/buyer and seller or applicant and passenger, and shall set out:

(a) The rates applicable;

(b) The extent and scope of the activity covered by the contract; and

(c) The minimum number of persons to be transported.

(3) Reference to a published common carrier tariff shall not be acceptable in defining rates or compensation.

(4) At least one (1) of the contract copies shall have original signatures.

(5) The extent of the authority of the contract carrier permit shall be:

(a) Limited to the scope of the contract on file with the department; and

(b) Made a part of the permit.

(6)(a) If the motor carrier has complied with the provisions of this administrative regulation, the Department of Vehicle Regulation shall issue the carrier an insurance receipt.

(b) The motor carrier shall keep a copy of the insurance receipt in each vehicle operating pursuant to this authority.

Section 6. Charter Bus Applications. (1) An application for operating authority as a charter bus operator pursuant to KRS 281.637 shall be made on form TC 93-20 "Application for Charter Bus Operating Authority".

(2) In accordance with KRS 281A.010(8)(d), a charter bus shall be considered to be a commercial motor vehicle as defined by KRS 281A.010(8) except that it shall be designed to transport seventeen (17) or more persons, including the driver.

(3) Each application shall include a filing fee of twenty-five (25) dollars.

(4) The applicant shall certify knowledge of and compliance with 601 KAR 1:005, Sections 2, 3(b) and 4 and with the provisions of KRS Chapter 281A relating to commercial drivers licenses.

(5) The applicant shall be required to file evidence of insurance as required in KRS 281.655(4).

(6)(a) If an applicant for a charter bus certificate has complied with the provisions of this administrative regulation, the Department of Vehicle Regulation shall issue the carrier a registration receipt authorizing charter bus operations between all points and places in Kentucky.

(b) The carrier shall keep a copy of this receipt in each vehicle operating pursuant to this authority.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Transportation Cabinet form TC 93-10, Application for Operating Authority, Household Goods, revised April 1999;

(b) Transportation Cabinet form TC 93-11, Application for Operating Authority, Disabled Persons Carrier, revised April 1999;

(c) Transportation Cabinet form TC 93-12, Application for Operating Authority, Bus and Airport Shuttle, revised April 1999;

(d) Transportation Cabinet form TC 93-13, Application for Operating Authority, City Limousine and Taxi, revised April 1999;

(e) Transportation Cabinet form TC 93-15, Application for Operating Authority, County Limousine and Taxi, revised April 1999;

(f) "Application for Charter Bus Operating Authority", form TC 93-20, revised December 2001;

(g) "Procedure Manual for Single State Registration System", July 12, 1993 edition; and

(h) 49 CFR Part 367 revised October 1, 2001, prescribes standards for registration with states.

(2) The material in subsection (1)(a) through (e) and (h) of this section may be inspected, copied or obtained, subject to applicable copyright law, at the Office of General Counsel, Hearings Section, State Office Building, 501 High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) The material incorporated in subsection (1)(f) and (g) of this section may be inspected, copied or obtained, subject to applicable copyright law, at the Division of Motor Carriers, Third Floor of the State Office Building, 501 East High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m. (DMT-3; 1 Ky.R. 784; eff. 5-14-75; 18 Ky.R. 2359; 2695; 2961; 3195; eff. 5-1-92; 20 Ky.R. 1381; eff. 2-10-94; 22 Ky.R. 1725; 2299; eff. 6-6-96; 26 Ky.R. 201; eff. 9-7-99; 28 Ky.R. 1688; 2572; eff. 6-14-2002.)

601 KAR 1:045. Application for certificate filing.

RELATES TO: KRS Chapter 281

STATUTORY AUTHORITY: KRS 281.600, 281.650

NECESSITY, FUNCTION, AND CONFORMITY: The statutes require the Department of Vehicle Regulation to accept applications for operating authority by motor carriers. This administrative regulation provides general provisions for the filing of applications for certificates with the Department of Vehicle Regulation.

Section 1. (1) **Renewal Applications.** Each certificate or permit holder who is properly certificated and operating during a calendar year shall apply for renewal to the Department of Vehicle Regulation by the end of that calendar year if it intends to continue in operation during the ensuing calendar year. All renewal applications furnished by the department and shall be accompanied by the filing fee prescribed by KRS 281.650. All renewal applications and exhibits shall be typewritten or printed legibly in ink. The applicant for renewal shall provide notice that it intends to continue operation, any change in address, any change in ownership, any change in contact person, any change in telephone number or any other change pertinent to its operation as an authorized motor carrier.

(2) No certificate or permit shall be renewed based upon an incomplete application. A certificate or permit which has been revoked shall not be renewed. If a certificate or permit has been altered or amended, it may only be renewed as altered or amended. A certificate or permit which has been suspended shall not be renewed until after the termination of the suspension period.

Section 2. (1) **Merger and reissuance of certificates.** If a merger of motor carriers occurs in accordance with KRS 281.630(9), the department may upon its own motion, or at the request of a carrier, in instances where a carrier holds two (2) or more certificates, call a hearing and issue proper orders merging the several certificates into one (1) certificate, and in the same proceeding may make any modification of the wording of the certificate to eliminate unnecessary duplications, to clear up ambiguities and to show present highway numbers if they have been changed.

(2) Applications for merger and reissuance of certificates shall be in petition form signed and sworn to by the person submitting it. The petition shall contain the information required by 601 KAR 1:040 and be accompanied by the exhibits required by 601 KAR 1:040, except that the financial statement may be omitted. The petition shall set out the present wording of all certificates involved and shall also contain the proposed wording for the reissued certificate.

(3) Nothing herein shall be so construed as to require a hearing where a hearing, in the commissioner's judgment, is not necessary. It shall be completely within the discretion of the commissioner whether a hearing on an application for merger and reissuance is necessary, and, if so, the time and place for the hearing to be held. (DMT-4; 1 Ky.R. 785; eff. 5-14-75; Am. 16 Ky.R. 191; eff. 10-4-89; 18 Ky.R. 2697; eff. 4-3-92.)

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601 KAR 1:050. Rates and fares.

RELATES TO: KRS Chapter 281

STATUTORY AUTHORITY: KRS 281.600

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281.695 authorizes the Transportation Cabinet to fix or approve the rates, fares, charges, classifications, rules and administrative regulations of each carrier. This administrative regulation requires the filing and maintaining of just and reasonable rates and establishes the procedure therefor.

Section 1. Establishment of Initial Rates or Fares. (1) An authorized carrier of either persons or property desiring to establish its intrastate rates or fares for the first time need not conform to the requirements of 601 KAR 1:045, but shall file its proposed tariff in duplicate with the cabinet not less than thirty (30) days before it is to become effective, provided that for good cause shown the cabinet may allow an initial rate or fare to become effective, on less than thirty (30) days' notice. Such tariff shall be accompanied by a statement showing how the rates, fares and charges were determined. The cabinet may subject the proposed tariff to an investigation, and it shall be subject to protests by interested parties. The cabinet, after its due consideration or upon the basis of a protest, may suspend the proposed tariff pending receipt of additional information, or the cabinet may assign the matter for public hearing. If the proposed tariff is not suspended, it will become effective on its proposed effective date.

(2) Tariffs filed pursuant to this rule must be typewritten or legibly printed in ink or good paper of good quality, and need not conform with the requirements of 601 KAR 1:060; however, within thirty (30) days after the effective day of the proposed tariff, it must be brought in conformity with 601 KAR 1:060.

Section 2. Change in Existing Rates or Fares of Common Carriers and Irregular Route Common Carriers of Specific Commodities. (1) All changes in any rate or fare shall be shown by the filing of a new tariff or supplement thereto, which tariff shall be in accordance with the requirements of 601 KAR 1:060. Notice of any change in any rate or fare shall be given in accordance with 601 KAR 1:070.

(2) An authorized carrier desiring to make a change in its existing intrastate fares, rates or charges need not conform with the requirements of 601 KAR 1:045 but shall file its application and exhibits in triplicate with the cabinet, such application to be in the form of a petition filed in accordance with the requirements of 601 KAR 1:030. The application shall contain the following information:

- (a) The applicant's name and address;
- (b) The type of service rendered;
- (c) A detailed statement including the reasons why the change is necessary; and
- (d) A detailed statement of the change which is sought.

(3) The following exhibits shall accompany any application filed by a common carrier of persons, which exhibits must be set forth separately and attached thereto:

- (a) A copy of the applicant's tariff containing the proposed change;
- (b) A comparative statement containing the applicant's present and proposed fares, showing the effect of the proposed fares;
- (c) Income statements in comparative form covering the past two (2) years' operations each year ending as of the end of the carrier's fiscal year;
- (d) An income statement and balance sheet for the year ending as of the end of the last month preceding the date of filing of the application.

(4) Any common carrier authorized to exclusively transport property desiring to effect a change in rates upon less than thirty (30) days' notice to the cabinet shall not be required to comply with 601 KAR 1:050 unless requested, but shall furnish in addition to the other requirements a statement or statements containing such information that clearly sets forth the reasons for the proposed change upon less than thirty (30) days' notice to the cabinet.

(5) Any applicant may furnish other information in addition to that required by this administrative regulation as may appear useful to the cabinet in determining justification for the proposed change at the time the application is filed.

(6) The cabinet may request any additional information as may be reasonable and useful for its study of any case.

Section 3. Change in Existing Rates or Fares of Contract Carriers. All changes in any rate or fare charged by a contract carrier shall be shown by the filing in duplicate of a new contract or supplement thereto. A statement fully setting forth the reasons for the proposed change shall accompany the contract.

Section 4. Rates and Charges. When the cabinet removes a commodity from the list of exempted commodities as set forth in its administrative regulations, it may at any time upon its own motion, or upon the application of an affected carrier, call a hearing for the purpose of fixing or changing the rates and charges for the transportation of such commodity or commodities removed from the exempted commodity list.

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Section 5. Burden of Proof. The burden of proof as to any change of rates, fares or schedules shall be upon the applicant. (DMT-5; 1 Ky.R. 785; eff. 5-14-75.)

(j) Rates may be shown on the title page of single sheet tariffs.

(5) Contents of tariff. Tariffs shall contain the following:

(a) Table of contents arranged alphabetically showing the number of the page on which each subject may be found. If a tariff contains so small a volume of matter that its title page or interior arrangement plainly indicates its contents, the table of contents may be omitted;

(b) List of participating carriers in joint or agency tariffs;

(c) A complete index of all commodities on which specific rates are named therein together with references to the page or items in which they are shown. No index need be shown in tariffs of less than five (5) pages;

(d) Explanation of all abbreviations, symbols and reference marks used in the tariff;

(e) Rules and administrative regulations covering the general application of rates and other pertinent matters;

(f) The tariffs of common carriers of property shall contain an explicit statement of the rates and charges in cents or in dollars and cents per 100 pounds per mile, per hour, per ton of 2,000 pounds, per truck load (of stated amount), or other definable measure. Where rates are stated in amounts per package or bundle, definite specifications showing size, capacity or weight of the packages or bundles must be shown. The tariffs of common carriers of persons shall contain an explicit statement of the fares in cents or in dollars and cents together with the names or description of the point from and to which they apply; and

(g) Tariffs containing tables of rates based on distances from point of origin to destination must show the mileage or indicate a definite method by which such mileages shall be determined.

(6) Powers of attorney and concurrences. Whenever two (2) or more carriers join in a tariff, authority by means of proper power of attorney and/or concurrences must be given the agent or carrier publishing the tariff. The original of all powers of attorney and concurrences shall be filed with the cabinet and a duplicate of the original filed with the agent or carrier in whose favor such document is issued. Whenever a carrier desires to cancel the authority granted an agent or another carrier by power of attorney or concurrence, this may be done by a letter addressed to the cabinet revoking such authority on fifteen (15) days' notice unless otherwise authorized by the cabinet. Copies of such notice must also be mailed concurrently to all interested parties.

(7) Adoption notice.

(a) When a certificate or permit is sold, transferred, changed or leased to another company or when the name of a company or carrier is changed, the new company or operator shall have issued an adoption notice as a supplement to the former company's or operator's tariff, reading as follows: "Effective (here insert the effective date of the new company or operator), all rates and charges published herein for account of (here insert name of former company or operator), are hereby adopted by (here insert name of new company or operator) and made its own in every respect as if originally published for its account."

(b) In addition to the above adoption notice, the adopting carrier shall immediately file or cause to be filed with the cabinet a consecutively numbered supplement giving effect to the tariff adopted.

Section 3. Tariff Rules Affecting Common Carriers of Property and Irregular Route Common Carriers of Specific Commodities. (1) Reasonable joint through rates may be established. Every common carrier of property and irregular route common carrier of specific commodities may establish reasonable joint through rates with other carriers.

(2) Commodity rates and exception ratings. Exception ratings and rates take precedence over classification ratings and rates, and are applicable whether higher or lower. The establishment of a commodity rate removes the application of the class rate and the exception rate on the same article between the same points over the same route, except when and insofar as alternative use of class, exception and commodity rates is specifically provided in the tariff containing such commodity rates. Commodities shipped that are not specifically included in the commodity rates, or exception or classification ratings shall be classified and rated at the classification ratings and rates for the most closely analogous classified commodity, and, in no instance, can a similar commodity rate or exception rating or rate be charged.

(3) Interchange of freight. All common carriers of property and irregular route common carriers of specific commodities who establish through rates with one (1) or more carriers shall interchange freight with such carriers.

(4) Bill of lading. Common carriers of property and irregular route common carriers of specific commodities must give each shipper of property a receipt for same, in duplicate, in the form of a standard uniform straight or order bill of lading retaining a copy for its files, which bill of lading shall describe in particular the commodity shipped, the number of pieces received and the weight of each commodity comprising the shipment. The carrier shall deliver the merchandise and secure a receipt for freight delivered, on a freight bill made out by the carrier, which shall describe the property as stipulated on the bill of lading covering the shipment, show the rate charged, and show all charges to be collected.

(5) Collection of freight charges. Freight charges must be collected within seven (7) days from date of delivery of freight on either a collect or prepaid basis, except that a carrier may extend credit for additional freight charges for a period of thirty (30) days whenever possession of freight has been relinquished and the amount of the tariff charges represented in the original freight bill has been collected.

(6) Handling of COD shipments. Shipments on a COD basis or an order-notify basis shall be handled in compliance with the rules and administrative

601 KAR 1:070. Notice.

RELATES TO KRS Chapter 281

STATUTORY AUTHORITY: KRS 281.600

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281.600 requires the Transportation Cabinet to establish reasonable requirements with respect to continuous and adequate transportation service. This administrative regulation provides for requirements for uniform written notice by the applicants on matters before the cabinet.

Section 1. Notice by Applicant. (1) Tariff changes of common carriers of persons. No common carrier of persons shall make any change in any fare except upon thirty (30) days' notice to the cabinet. A common carrier bus operator desiring to make a general change in its fares shall give detailed notice of its proposed action to all competing and connecting carriers and shall cause an advertisement to be published in a sufficient number of newspapers of general circulation to cover the territory affected by the change sought, such advertisements to be published once a week for three (3) consecutive weeks. The advertisement shall clearly indicate the proposed change, the proposed effective date of such change and shall state that any persons desiring to protest may do so by filing a protest with the cabinet, such protest to be in accordance with the rules and administrative regulations of the cabinet. The first such required notice shall be published on or before the date of which the application is filed with the cabinet, and the second and third such required notice shall be published during the next two (2) succeeding calendar weeks. In addition, each intercity bus operator (not including suburban, city and industrial bus operators) shall post notice of a change of fares in each of its terminals and places of regular stops, which notice shall contain the same information as the newspaper advertisements. Suburban, city and industrial bus operators shall post a notice of a change in fares in each of its buses, which notice shall contain the same information as the newspaper advertisements. City bus operators shall also give notice of its proposed change to the chief executive officer of the city or cities wherein it is authorized to operate. No later than ten (10) days subsequent to the third publication of the advertisement in the newspaper or newspapers, the applicant shall file with the cabinet an affidavit in duplicate to the effect that the required notice has been given. The affidavit shall be accompanied by a copy or copies of the advertisements.

(2) Tariff changes of common carriers of property and irregular route common carriers of specific commodities.

(a) No common carrier of property or irregular route common carrier of specific commodities shall make any change in any rate or charge except upon thirty (30) days' notice to the cabinet; provided, however, that the cabinet, may, for good cause shown, allow a change to be made upon less than thirty (30) days' notice. The application for permission to change rates upon less than thirty (30) days' notice shall be filed with the cabinet in accordance with the requirements of these rates and administrative regulations. All tariffs filed upon less than thirty (30) days' notice shall contain the following notation:

"Effective _____ published on _____ days' notice under authority of special permission of the Transportation Cabinet."

(b) A regular or irregular route common carrier truck operator, except an irregular route common carrier truck operator authorized to transport "household goods," desiring to make a change in its rates or charges shall, at or immediately prior to the time of the filing of the tariff or supplement thereto, notify all competing and connecting carriers of such change. In addition, similar notice shall be given to any shipper or interested party requesting same.

(c) An irregular route common carrier truck operator authorized to transport "household goods" desiring to make a change in its rates and charges shall, at or immediately prior to the time of the filing of the tariff or supplement thereto, notify all competing and connecting carriers having a situs within fifty (50) miles of his situs of such change. In addition, similar notice shall be given to any shipper or interested party requesting same, and 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 increase, the old rates, and charges, the proposed new rates and charges, and which shall state that any interested party may protest said increase by filing a protest with the Transportation Cabinet in accordance with its rules and administrative regulations.

(d) Pursuant to this requirement every regular or irregular route common carrier truck operator or its tariff publishing agent shall maintain a list of shippers and interested parties. Any shipper or interested party desiring notice of rate changes of any carrier shall request such carrier or its tariff publishing agent to place its name upon the list. Thereafter such carrier will be required to furnish such shipper or interested party notice of any change in its rates. The cabinet may at any time designate and furnish to carriers or their tariff publishing agents a list of interested parties to be furnished notice of any change in any rate or charge, and the carriers or their tariff publishing agents shall give such interested party or parties the same notice which is required to be given to other interested parties set out herein.

(3) Change in schedules.

(a) No common carrier bus operator, except a city bus operator, shall make any change in any schedule except upon fifteen (15) days' notice to the cabinet. If such 15th day occurs on Saturday, Sunday or a legal holiday, the time schedule shall be forwarded so as to reach the cabinet on the last working day prior to the 15th day in advance of the effective date. A common carrier bus operator, desiring to change any schedule shall, at the time of the filing of the schedule or supplement thereto, notify all competing and connecting carriers of such change by mailing a copy of proof of the time schedules via United States Mail to an official of said carrier at its general office of record. Competing and connecting carriers shall be determined by those listed in a scheduled publication or guide generally used in the area affected by the change or those requesting notification by letter to the carrier, with a copy to the cabinet. The carrier shall also prominently post a copy of the new schedule in each of its affected terminals and except in the case of a suburban bus operator, places of regular stop.

(b) City bus operators operating in both intrastate and interstate commerce, and city bus operators serving one (1) or more cities which have not exercised their power under KRS 281.635 to prescribe rules and administrative regulations respecting schedules of such city bus operators, shall give fifteen (15) days' notice to the cabinet and the chief executive officer of the city or cities involved and shall post notice of the proposed schedule change in each bus operating over the route or routes affected; provided, however, where the proposed schedule will not change the interval between buses in excess of five (5) minutes, such notice shall not be required. City bus operators serving one (1) or more cities and their suburban areas, but whose operation is principally confined to a city of the first class, shall not be required to give the notice otherwise required therein.

EX. 4 - "W"

(c) The new schedule posted as required above as notice to the public shall state that any person may protest the proposed change by filing at least five (5) days prior to the effective date a protest containing the reasons therefor with the Kentucky Transportation Cabinet, Frankfort, Kentucky, with a copy to the carrier.

(d) The cabinet may, in the case of an emergency or when it is the opinion of the cabinet that the facts justify, approve a schedule change at any time.

(e) Nothing contained herein shall be construed in such manner as to make this administrative regulation inconsistent with KRS 281.610, 281.635 or KRS Chapter 424. Suburban bus operators may make temporary changes in their time schedules in accordance with KRS 281.700.

Section 2. Alternative Notice of Schedule Change. Notwithstanding the provisions of 601 KAR 1:070, and in lieu of posting the copy of the new schedule, as set out in 601 KAR 1:070, a common carrier of persons may prominently display on a bulletin board located in each of its affected terminals an announcement that certain schedule changes will become effective a certain date. Such announcement shall be at least eight by eleven (8 x 11) inches, and the lettering thereon shall be approximately three-fourths (3/4) of an inch, and easily discernible. This announcement shall clearly describe where information concerning the proposed schedule adjustments may be obtained. Such announcement shall also contain the following notation: "Any person may protest the proposed change by filing at least five (5) days prior to the effective date such protest with the Kentucky Transportation Cabinet, Frankfort, Kentucky, with a copy to the carrier. All protests must state the ground or reasons therefor." (DMT-8; 1 Ky.R. 787; eff. 5-14-75.)

601 KAR 1:075. Claims.

RELATES TO: KRS Chapter 281

STATUTORY AUTHORITY: KRS 281.600

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281.600 enables the Transportation Cabinet to establish reasonable requirements in order to maintain adequate service of transportation. This administrative regulation provides for the rules and administrative regulations for the presentation and handling of loss and damage claims.

Section 1. Claims for Loss or Damage. (1) Acknowledgment of claims. Every regular or irregular route common carrier which receives a written claim for loss of or damage to property transported by it shall acknowledge receipt of such claim in writing to the claimant within thirty (30) days after its receipt by the carrier or the carrier's agent. The carrier shall, at the time such claim is received, cause the date of receipt to be recorded on the claim.

(2) Handling by carrier. Every such carrier which receives a written claim for loss or damage to property transported by it shall pay, decline, or make a firm compromise settlement offered in writing to the claimant within 120 days after receipt of the claim by the carrier or its agent; provided, that, if for reasons beyond the control of the carrier the claim cannot be processed and disposed of within 120 days after the receipt thereof, the carrier shall have advised the claimant in writing of the status of the claim and the reasons for the delay in making final disposition thereof.

(3) Register of loss and damage claims. Every common carrier shall maintain the necessary files showing for each cargo loss and damage claim received, the name of claimant, date, claim number, and amount of claim; date claim was paid; total amount paid; or date claim was disallowed and reasons. (DMT-9; 1 Ky.R. 788; eff. 5-14-75.)

Ex. 4 - "X"

the carrier shall comply with such request immediately upon determining the actual weight and charges, by telephone or telegraph if so requested. Such notification shall be at the carrier's expense in instances in which notification would be required under subsection (4) of this section and in all other instances unless the carrier provides in its tariff that the actual cost of such notification shall be collected from the shipper. Such notification shall be made no later than twenty-four (24) hours prior to the time the shipment is offered for delivery except where the shipment is in transit less than twenty-four (24) hours.

(4) Notification to shipper where charges exceed estimate. Whenever actual charges on any shipment exceed by more than ten (10) percent or twenty-five (25) dollars, whichever is greater, any estimate of charges given by the carrier to the shipper, immediately upon determining the actual charges, the carrier shall notify the shipper of the amount thereof by telegram or telephone at the carrier's expense. Such notice shall be made no later than twenty-four (24) hours prior to the time the shipment is offered for delivery, except where the shipment is in transit less than twenty-four (24) hours; provided, that this paragraph shall not apply:

(a) Where credit is to be extended by the carrier; and

(b) Where the shipper has not supplied, upon request by the carrier, an address or telephone number at which the communication would be received.

(5) Report of underestimates. Every irregular route common carrier of household goods shall file quarterly with the Transportation Cabinet, a report of all instances during that quarter in which the actual charges for services rendered exceeded the estimates of such charges by ten (10) percent or more, or twenty-five (25) dollars or more, whichever is greater, with an explanation of reasons for the variances. Such reports shall be filed on or before April 30, July 31, October 31 and January 31 for the quarter ended as of the last day of the preceding month.

(6) Reweighting. The carrier shall, upon request, made by the shipper, owner or consignee, before delivery and when practicable to do so, reweigh the shipment. A reasonable charge may be established for reweighing only when the difference between the two (2) net scale weights does not exceed 100 pounds on shipments weighing 5,000 pounds or less, and two (2) percent of the lower net scale weight on shipments weighing more than 5,000 pounds. The lower of the two (2) net scale weights shall be used for determining applicable charges.

(7) Order for services shall not show charges or estimates. There shall not be shown on any form in the nature of a "moving order" or "order for service" which may be used by carriers of household goods any charges or estimates of charges nor any reference to any estimate of charges given to the shipper.

Section 10. Absorption or Advancement of Dock Charges. Irregular route common carriers of household goods shall not absorb any dock or other charge made by any warehouseman, nor shall any such carrier advance any such charge for the account of any shipper, owner, or other person, except upon the authorization of such person. Whenever such charges are advanced on behalf of the shipper, the carrier shall obtain a receipt therefor from the warehouseman and deliver it to the shipper or the person designated by the shipper at the time the advanced charges are made.

Section 11. Information for Prospective Shippers. During the course of the first interview with every prospective shipper, every carrier of household goods shall cause to be given to the prospective shipper a summary of information in the form specified by the cabinet. Such summary shall be printed on one (1) sheet in not less than eight-point bold of full-faced type and shall contain the heading, "Important Notice to Shippers of Household Goods." The carrier's name, address, and telephone number may be shown on the sheet if that is desired. If no personal interview is had with the shipper, the carrier shall cause such summary to be mailed to the shipper on or prior to the day on which the order for service is placed. The carrier shall make an appropriate notation on the receipt or bill of lading that such summary has been furnished.

Section 12. Minimum Weight Shipments. No common carrier shall accept a shipment of household goods for transportation which appears to be subject to the minimum weight provisions of the carrier's tariff without first having advised the shipper of such minimum weight provisions. (DMT-10; 1 Ky.R. 789; eff. 5-14-75.)

601 KAR 1:095. Complaints.

RELATES TO: KRS Chapter 281

STATUTORY AUTHORITY: KRS 281.600

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 281.600, this administrative regulation provides for the procedure by which complaints received by the Transportation Cabinet shall be processed and the necessary requirements that must be met in order that complaints are handled uniformly.

Section 1. Who May File. Any interested party or the cabinet may at any time initiate a complaint concerning any matter under the jurisdiction of the cabinet.

Section 2. Form and Contents. Complaints shall be in petition form, and shall conform to the requirements of 601 KAR 1:030. Complaints must be fully, clearly and with reasonable certainty descriptive of the act or thing done or omitted to be done and shall refer to the law, order or rule which the complainant alleges has been or is being violated.

Section 3. Answers. If respondent so desires, it may answer the complaint. Answers must be prepared in accordance with the requirements of 601 KAR 1:030, and respondent shall have a copy served upon complainant which shall contain a specific denial of such material allegations of the complainant as are controverted, and also a statement of any new or other matter constituting a defense. Answers shall be made within twenty (20) days, with the right for addition of time for just cause shown.

Section 4. Procedure. Upon receipt of the complaint and the answer thereto, or if no answer is filed within the prescribed time, the cabinet shall fix a time and place for a public hearing and shall give notice of such hearing to the complainant, respondent and any other interested parties as the cabinet deems advisable. However, any complaint filed wherein the facts are not in issue may, upon agreement of the parties, be submitted to the commissioner for a ruling without the necessity of holding a hearing. When the matter is so submitted, the commissioner may require the submission to be on briefs or upon oral argument or on both. (DMT-14; 1 Ky.R. 791; eff. 5-14-75; Am. 2 Ky.R. 598; 3 Ky.R. 294; eff. 8-4-76.)

EX-4 - "Z"

601 KAR 1:101. Proof of liability and cargo insurance.

RELATES TO: KRS 281.600, 281.655, 281.656, 281.670, 281.990, 49 CFR Parts 387, 1023, 1043

STATUTORY AUTHORITY: KRS 281.600, 49 CFR Parts 387, 1023, 1043

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281.655(1) requires that before any certificate or permit will be issued or renewed, the applicant or holder shall file with the department an approved indemnifying bond or insurance policy. This administrative regulation establishes a system of insurance filings for all motor carriers operating in intrastate commerce or which have been registered in Kentucky pursuant to the provisions of 49 CFR Part 1023.

Section 1. Proof of Insurance of Interstate Exempt and Intrastate Motor Carriers. (1) Evidence of insurance required by KRS 281.655(1) shall be filed for motor carriers operating in intrastate commerce and those operating in interstate commerce but which are exempt from the authority of the Interstate Commerce Commission with the Division of Motor Carriers in the form of a certificate of insurance. The certificate of insurance shall be written to show the term of the policy to be continuous until cancelled under proper notice. Another form of evidence of insurance shall not be accepted.

(2) The certificate of bodily injury and property damage insurance shall be on form TC 95-211, "Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance" revised April, 1988.

(3) All household goods motor carriers shall file proof of cargo insurance on form TC 95-212, "Uniform Motor Carrier Cargo Certificate of Insurance" revised April, 1988.

(4)(a) Cancellation of insurance required to be filed pursuant to KRS 281.655(9) shall be effected through the filing of form TC 95-213, "Uniform Notice of Cancellation of Motor Carrier Insurance Policies" revised April, 1988.

(b) Notice of the reinstatement of insurance which was cancelled pursuant to subparagraph (a) of this subsection shall be as set forth in subsections (2) and (3) of this section.

Section 2. Insurance - Interstate Authorized Carriers. (1) Provisions of Title 49, Code of Federal Regulations, Part 387 as effective January 11, 1995 and 49 CFR Part 1043.2 as effective November 13, 1990, shall govern the minimum amounts of liability insurance of a motor carrier of property or passengers authorized to do so by the Interstate Commerce Commission.

(2) In accordance with 49 CFR Part 1023, Interstate Commerce Commission authorized motor carriers registered in Kentucky pursuant to 601 KAR 1:040, Section 5 shall file proof of insurance with the Division of Motor Carriers on Form B.M.C. 91, "Motor Carrier Automobile Bodily Injury and Property Damage Liability Certificate of Insurance" revised by the Interstate Commerce Commission in January, 1982, or if more than one (1) insurance carrier is involved, Form B.M.C. 91X, "Motor Carrier Automobile Bodily Injury and Property Damage Liability Certificate of Insurance" revised by the Interstate Commerce Commission in January, 1982. These forms are incorporated by reference.

Section 3. Reinstatement of Insurance. A motor carrier desiring to file a reinstatement of insurance which has been cancelled shall file a new certificate of insurance as required by this administrative regulation.

Section 4. Self-insurers. (1) Persons applying in accordance with KRS 281.655(11) for an exemption in whole or in part, from the requirements of KRS 281.655(1), (5) and (6) shall file their application in petition form accompanied by a balance sheet and an income statement, as exhibits, which shall be prepared by a Certified Public Accountant or a responsible accounting officer of the applicant and shall reflect the actual financial condition of the applicant as of the last calendar quarter preceding the date of the application.

(2) When an authorized carrier operating exclusively in interstate commerce has qualified as a self-insurer with the Interstate Commerce Commission, and that commission has entered an order allowing the carrier to qualify as a self-insurer, the applicant may file, as an exhibit, a certified copy of the ICC order with its application in lieu of a balance sheet and an income statement.

(3) The cabinet shall, in its discretion, enter an order consistent with its opinion of the applicant's financial condition.

(4) The order may be revoked by the cabinet at any time when it has reason to believe that the financial condition of the applicant has changed.

(5) The cabinet may also require the filing of additional financial statements or at any time it has reason to believe the financial condition of the applicant has changed.

Section 5. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) Form TC 95-211, "Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance", revised April 1988;

(b) Form TC 95-212, "Uniform Motor Carrier Cargo Certificate of Insurance", revised April 1988;

(c) Form TC 95-213, "Uniform Notice of Cancellation of Motor Carrier Insurance Policies", revised April 1988;

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