

IN THE MATTER OF
NEW ENGLAND MOTOR RATE BUREAU, INC.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9170. Final Order, Aug. 18, 1989—Modifying Order, Nov. 6, 1990

This order reopens the proceeding and modifies the final order [112 FTC 200], that prohibits the respondent from agreeing to fix rates charged for interstate transportation in certain states, by deleting references to the state of Massachusetts, pursuant to the mandate of the First Circuit in the United States Court of Appeals.

MODIFIED ORDER TO CEASE AND DESIST

Respondent New England Motor Rate Bureau ("NEMRB") having filed in the United States Court of Appeals for the First Circuit on October 11, 1989, a petition to review an order to cease and desist entered herein on August 18, 1989; the court of appeals having rendered its decision and judgment on July 20, 1990, affirming and enforcing the Commission's order with modifications; and the time in which to file a petition for certiorari having expired without either party having filed such a petition;

Now, therefore, *it is hereby ordered*, That the aforesaid order to cease and desist be, and it hereby is, modified in accordance with the decision and judgment of the court of appeals to read as follows:

ORDER

I.

It is ordered, That NEMRB, its successors and assigns, and its officers, agents, representatives, directors and employees directly or through any corporation, subsidiary, division or other device shall forthwith cease and desist from:

1. Entering into, adhering to, or maintaining, directly or indirectly, any contract, agreement, understanding, plan, program, combination or conspiracy to fix, stabilize, raise, maintain, or otherwise interfere or tamper with the rates charged by carriers that compete for the

intrastate transportation of property or related services, goods or equipment within any of the states in which NEMRB operates.

2. Knowingly preparing, developing, disseminating, or filing a proposed or existing tariff provision that contains collective rates for the intrastate transportation of property or other related services, goods, or equipment.

3. Providing information to any carrier about rate changes ordered by any other carrier employing the publishing services of the respondent prior to the time at which such rate change becomes a matter of public record.

4. Inviting, coordinating, or providing a forum for (including by publication of an informational bulletin) any discussion or agreement between or among competing carriers concerning intrastate rates charged or proposed to be charged by carriers for the intrastate transportation of property or related services, goods, or equipment.

5. Suggesting, urging, encouraging, persuading, or influencing in any way members to charge, file, or adhere to any existing or proposed tariff provision that affects rates, or otherwise to charge or refrain from charging any particular price for any services rendered or goods or equipment provided.

6. Agreeing with any carrier to institute automatic changes to rates on file for that carrier.

Provided, however, that except as to the state of New Hampshire, nothing in this order shall prohibit NEMRB from jointly setting or adhering to rates charged for intrastate transportation of property in any state where such joint activity is engaged in pursuant to a policy, clearly articulated and affirmatively expressed by the state legislature, to displace competition with respect to those prices and where such joint activity is actively supervised by a state regulatory body.

II.

It is further ordered, That NEMRB shall, within six (6) months after service upon it of this order:

1. Take such action as may be necessary to effectuate cancellation and withdrawal of all tariffs and any supplements thereto on file with any state or commonwealth that it was involved in preparing, developing, or filing that establish rates for transportation of property or related services, goods or equipment by common carriers within such state or commonwealth.

2. Terminate all previously executed powers of attorney and rate and tariff service agreements, between it and any carrier utilizing its services, authorizing the publication and/or filing of intrastate collective rates within any state or commonwealth.

Provided, however, that except as to the state of New Hampshire, nothing in this order shall require NEMRB to cancel and withdraw tariff filings, powers of attorney, or rate and tariff service agreements in any state where joint setting of rates charged for intrastate transportation of property is engaged in pursuant to a policy, clearly articulated and affirmatively expressed by the state legislature, to displace competition with respect to those prices and where such joint activity is actively supervised by a state regulatory body.

III.

It is further ordered, That NEMRB shall within thirty (30) days after service upon it of this order, mail or deliver a copy of this order to each current member, and for a period of three (3) years from the date of service of this order, to each new member within ten (10) days after the member's acceptance by NEMRB.

IV.

It is further ordered, That NEMRB notify the Commission at least thirty (30) days prior to any proposed change in the respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, or any other proposed change in the corporation which may affect compliance obligations arising out of the order.

V.

It is further ordered, That NEMRB shall file a written report within six (6) months after the date of service of this order, and annually on the anniversary date of the original report for each of the five years thereafter, and at such other times as the Commission may require by written notice to respondent, setting forth in detail the manner and form in which it has complied with this order.