

ORIGINAL

Decision No. 47663

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation)
into the rates, rules, regulations,)
charges, allowances and practices)
of all common carriers, highway)
carriers and city carriers relating)
to the transportation of property.)

Case No: 4808

Appearances

J. T. Phelps, Joseph G. Hunter, Floyd McColl,
and C. S. Abernathy, of Public Utilities
Commission of the State of California.

H. J. Bischoff, W. A. Steiger, Hugh Gordon,
Wyman C. Knapp, Fred T. Leonard, Tom Meyer,
W. J. Davis, Marvin Handler, Jackson W.
Kendall, F. E. Carey, Harold J. Blaine,
J. W. Barker, and Preston W. Davis, for
various carriers, respondents.

Frank M. Chandler and Larry M. Fites, for
Truck Owners Association of California,
interested party.

Arlo D. Poe, for Motor Truck Association
of Southern California, interested party.

E. O. Blackman, for California Dump Truck
Owners' Association of California,
interested party.

E. W. Kerttu, for California Moving and
Storage Association, interested party.

Edson Abel, for California Farm Bureau
Federation, interested party.

George E. Fiore, Robert W. Johnston and
George A. Kirschbaum, for Transport
Insurance Exchange, interested party.

L. H. Sangell, for Truck Insurance Exchange,
interested party.

O P I N I O N

Case No. 4808 is a general investigation into the rates
and practices of all for-hire carriers transporting property between
points within this State. This decision relates only to the
practices, by motor carriers, of leasing vehicles and of subhauling.

Public hearings have been held, and an examiner's proposed report has been issued.¹ Exceptions and a reply thereto have been filed. The matter is ready for decision.

Evidence received in the 1948 hearings was directed generally to the questions whether subhaulers should be deemed to be highway carriers and whether minimum rates have been or should be established for them. By Decision No. 42647 of March 22, 1949, (48 Cal.P.U.C. 576) which was stayed by petitions for rehearing, the Commission concluded that so-called "employee subhaulers" are not carriers and are not subject to minimum rates nor to any other regulations prescribed for carriers; that independent-contractor subhaulers are carriers; and that the rate orders should be clarified to specify that independent-contractor subhaulers are not subject to the existing minimum rates, rules or regulations (with a designated exception for dump trucks).

At hearings in October, 1949, members of the Commission's staff proposed regulations to govern subhaulers and the leasing of motor vehicles. The suggested rules would permit leasing and subhauling without direct restriction, but would require that all agreements therefor be reduced to writing and be filed with the Commission. Representatives of various carriers and associations examined the Commission witnesses at length, stated their several positions, and offered some direct testimony.

All of the evidence has been described and discussed in detail in the examiner's 20-page report of record. The report was

¹ Hearings were held before Examiner C. Ray Bryant (who issued the proposed report) in April and May, 1948, and in October, 1949. Hearings in Case No. 4946, partly incorporated herein by reference, were held before Examiner Joseph G. Hunter in April and May, 1948. The proposed report was issued on April 4, 1950.

distributed to all who had entered appearances in Cases Nos. 4808 and 4946, and to other persons believed to be interested. Exceptions were filed only by Pacific Freight Lines and Pacific Freight Lines Express, and by Southern Pacific Company and Pacific Motor Trucking Company. Reply to the exceptions was made only by Southern California Freight Lines and Southern California Freight Forwarders. The exceptors and replicant are in substantial disagreement with each other. Presumably other parties to the proceeding agree with, or in any event take no exception to, the examiner's conclusions.

It is unnecessary in this opinion to review the evidence and the examiner's discussion thereof. The exceptions to the examiner's report, and the reply to the exceptions, consist of an exposition of views concerning requirements and restrictions which would or would not be desirable, assertedly in the interests of sound regulation. Evidently it was not undertaken in the exceptions or reply to show wherein the evidence justifies or does not justify the prescription of the suggested requirements or restrictions. It would be pointless to recite herein the various conflicting regulatory patterns and plans advocated by the exceptors or by other parties. The question is not whether various and sundry regulatory policies would or would not be desirable, but whether there is any substantial evidence that such policies are justified or required.

We have examined the record carefully, and see no basis for reaching conclusions essentially different from those set forth in the examiner's proposed report. To withhold a decision pending further investigations and hearings, as suggested by some of the parties, would serve only to repress disposition of a proceeding in which the initial hearings were held more than four years ago. The following findings and order substantially maintain the status quo,

clarify questions of long standing as to which no exceptions were taken, are consistent with our findings in Decision No. 42647, supra, and do not in any way inhibit the prescription of such regulations or restrictions as the Commission may find necessary or desirable under the basis of any future record.

Upon careful consideration of all of the evidence of record, the Commission concludes and finds as follows:

1. Subhaulers, to the extent that they are subject to the direction and control of a principal carrier as to method, means and details of performing the work, under an employer-employee relationship, for the purpose and duration of that relationship are not carriers and are not subject to regulation as carriers under statutes as administered by this Commission.

2. Subhaulers who render service for a principal carrier, for a specified recompense, for a specified result, under the control of the principal as to the result of the work only and not as to the means by which such result is accomplished, are independent contractors rather than employees of carriers, and as such independent contractors are carriers under the Public Utilities Code.

3. Independent-contractor subhaulers, being carriers under the statutes, are prohibited by the statutes from operating without the type or types of permits or certificates required for the operations which they conduct. The types of permits or certificates required by independent-contractor subhaulers depend upon the scope and nature of their operations.

4. With an exception hereinafter provided for certain dump trucking services, the existing minimum rates, rules and regulations were not designed for application by independent-contractor subhaulers, and should and will hereinafter be made specifically inapplicable to independent-contractor subhaulers.

5. Need has not been shown for establishment of limitations or restrictions on subhauling practices or on leasing practices, nor for a requirement that written agreements be prepared and filed covering subhauling and leasing arrangements.

6. Part V of General Order No. 93-A, and Emergency Order No. EM-T 16, should and will hereinafter be canceled.

O R D E R

Based upon the evidence of record and upon the conclusions and findings set forth in the preceding opinion,

IT IS HEREBY ORDERED that the minimum rates, rules and regulations now established for the transportation of property by highway common carriers, radial highway common carriers, highway contract carriers, petroleum irregular route carriers, petroleum contract carriers, household goods carriers or city carriers shall not apply to transportation by an independent contractor when such transportation is performed for another carrier, except as otherwise specifically provided by Decision No. 40724, dated September 16, 1947, in Cases Nos. 4246 and 4434, as amended; nor shall any such contractor be required to issue or preserve copies of shipping documents covering such transportation; nor shall any such contractor be required to file with the Commission, as a condition precedent to such transportation, any bond for the faithful performance of C.O.D. obligations. Nothing herein shall be construed to exempt the highway carrier or city carrier for whom the independent contractor is performing transportation service from the minimum rates, rules and regulations prescribed by the Commission.

IT IS HEREBY FURTHER ORDERED that Part V of General Order No. 93-A and Emergency Order No. EM-T 16 be and they are hereby canceled.

IT IS HEREBY FURTHER ORDERED that the petition filed in this proceeding on March 24, 1948, by Truckman's Center, et al., be and it is hereby dismissed.

This order shall become effective twenty (20) days after the date hereof.

Dated at San Francisco, California, this 2nd day of September, 1952.

R. T. [Signature]
 President
Justice J. [Signature]
[Signature]
[Signature]

Commissioners