

52462

**ORIGINAL**

Decision No. \_\_\_\_\_

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
 own motion to determine procedure  
 and rules for administration of  
 Public Utilities Code Section 3575,  
 including amount, form, and content  
 of bond required thereby.

Case No. 5670

Appearances are listed at the end of the order. ✓

O P I N I O N

At the 1955 session of the State Legislature a certain section numbered 3575 was added to the Public Utilities Code. It reads as follows:

"3575. Every highway contract carrier and every radial highway common carrier who engages sub-haulers or leases equipment shall file with the Commission a bond, the amount of which shall be determined by the commission but which shall be not less than two thousand dollars (\$2,000), executed by a qualified surety insurer, subject to the approval of the commission, which bond shall secure the payment of the claims of sub-haulers and lessors of the highway carrier; provided, however, that the aggregate liability of the surety for all such claims shall, in no event, exceed the sum of such bond."

To implement the new statute the Commission instituted the present investigation on August 16, 1955. Its purpose is to establish rules and regulations for the administration of the section and to establish the amount of the bond. Hearings were held in San Francisco before Commissioner Ray E. Untereiner and Examiner John Power on November 7 and December 1, 1955. The Commission staff made its presentation at the November 7 hearing. The trucking industry made its presentation on December 1. A representative of the California Farm Bureau Federation made a statement of position for that organization at the November 7 hearing.

The staff's presentation included five witnesses and three exhibits. Staff counsel opened by giving the legislative history of Assembly Bill No. 3415 which became Section 3575. He presented an exhibit which illustrated that history. The first staff witness presented an exhibit which suggested the wide extent of subhauling in California. Another staff witness (from the rate section) testified and through him an exhibit was offered suggesting rules and regulations for implementation of Section 3575. The remaining three witnesses called by the staff were public witnesses. They included the past president of the California Trucking Associations, Inc., (CTA); the manager of the California Dump Truck Owners Association, Inc., and the president of the Surety Association of Northern California.

The industry's presentation on December 1 included both of the witnesses from the trucking industry who had previously testified for the staff. Other witnesses included the CTA's attorney and a Sacramento Valley Truck operator. The manager of a San Francisco messenger service made a statement. CTA's attorney and the Dump Truck Association witness each presented exhibits based on staff Exhibit No. 3, the "rules" exhibit. The two CTA witnesses favored a \$5,000 bond. The Dump Truck Association witness favored \$10,000. The other two participants advocated a bond of fluctuating amount based on the number of subhaulers used.

At the November 7 hearing the CTA witness followed the staff witnesses. Section 3575 was sponsored in the Legislature by his group. The 44 directors of CTA were unanimous in supporting this legislation. This witness had certain suggestions in connection with the rate witness' exhibit. He suggested that the amount of the bond be fixed at \$5,000.<sup>1/</sup> The witness pointed out practical

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<sup>1/</sup> The Board of Directors supported him at a later meeting and the CTA attorney's Exhibit No. 4 was drafted accordingly.

difficulties of operating under the staff-recommended requirement of a written agreement as the basis for all subhaul and leasing arrangements, suggested a change in the time for filing claims, and favored a different definition of "completion of shipment".

The CTA witness was followed by the manager of the California Dump Truck Owners Association, Inc. This is a southern California group, but the witness was authorized to speak for the equivalent northern California organization. This witness pointed out that in the dump truck field subhauling is very prevalent. Overlying carriers often have large sums in their hands which belong to their subhaulers. The witness has received many complaints of slow payment, underpayment and nonpayment. He stated that he was both officially and personally strongly in favor of this legislation. He favored \$10,000 for the amount. He favored one, and only one, denomination of bond. He did not think an annual bond premium of \$100 to \$200 would eliminate any prime carrier.

The third public witness was the president of the Surety Underwriters Association of Northern California. He was authorized to speak for that body and for some nonmembers. He was also authorized to speak for the Southern California Association with the proviso that if hearings were held in Los Angeles they might appear for themselves. This witness outlined factors considered by surety companies in underwriting risks. One of these is the true obligation to be assumed by the surety. The second is the question of cumulative liability, eliminated here by the wording of the statute. A third is the length of time allowed for the filing of claims. If 60- and 120-day limits are adopted (as recommended by certain witnesses) this would tend to hold down premiums. A fourth consideration was the possibility of adverse selection which would not exist here. A fifth is the desirability of a cancellation provision.

Surety companies, the witness said, obtain much of their business from various sources which they call "producers". He went on to say that a producer's recommendation plus a financial statement might, by themselves, be sufficient to support an application for a bond of up to \$5,000. Beyond that figure the degree of scrutiny would increase with the amount of the bond. In some instances security in the form of a full cash deposit might be required.

Certain recommendations of this witness were in conflict with those made by the two trucking industry witnesses at the November 7 hearing. For example, the CTA witness wanted times to start running from the date of issuance of a "clean" bill; namely, one on which the consignee has receipted for the goods without exception for overage, shortage or damage. This would render uncertain the beginning date on which the time limits for making demand upon and filing suit against the bonding company depend. The surety witness was anxious to have all key times and dates as certain and specific as possible.

There was a difference of opinion also on the question of the requirement of an agreement in writing. On the basis of practical considerations, the industry representatives did not favor this. They pointed out that subhaulers are not always employed in face-to-face transactions. The surety witness, however, strongly favored written agreements. He pointed out that sureties might refuse to pay some claims founded on oral contracts, thus naturally defeating the whole purpose of the legislation. On the other hand, the difficulty which the industry has in mind is a very real one. For example, a prime carrier in Fresno County might employ a subhauler located in Tulare County, by telephone or telegraph, to pick up a shipment from a farm in Kern County to be transported to the Los Angeles market. It would be far out of the subhauler's way to go to Fresno County to sign a contract.

At the December hearing, the industry witnesses indicated that they would not be opposed to written contracts provided such contracts did not have to be executed before the service starts. This seems reasonable if done under strict time limits and rules.

As pointed out above, the CTA and Dump Truckers' witnesses disagreed on the amount of the bond. The CTA favored \$5,000, the Dump Truck Association \$10,000. The latter group wanted the more thorough screening by the bonding companies which they expected to result from the larger denomination of bond. The CTA feared that too many truckers might be driven out of business by the larger bond. They further thought that there might be delays in getting the program started if there were too much screening. Neither group thought that \$5,000 or \$10,000 would, of itself, actually assure payment. CTA emphasized the idea that the amount of the bond is relatively unimportant; that the benefit of the legislation will accrue primarily from the influence it will exercise toward inducing prime haulers to meet their obligations rather than risk cancellation of their bonds.

In conclusion, the Commission is of the opinion and finds; first, that the just and reasonable amount for the bond required by Section 3575 of the Public Utilities Code is five thousand dollars; second, that a general order to be designated as General Order No. 102 of this Commission should issue worded as shown in Appendix "A" attached hereto; third, that the provisions of General Order No. 102 are reasonable and will give effect to the legislative intent as expressed in Section 3575 of the Public Utilities Code.

#### O R D E R

The California State Legislature having, by statutes of 1955, Chapter 1571, added a certain section numbered 3575 to the Public Utilities Code of this state imposing certain duties on this Commission, investigation having been instituted, public hearings held

and the matter having been submitted and being ready for decision; therefore,

IT IS ORDERED:

(1) That five thousand dollars (\$5,000) be, and it hereby is, fixed as the amount of the bond referred to in Section 3575 of the Public Utilities Code.

(2) That General Order No. 102 of this Commission is hereby established to read as shown in Appendix "A" hereto attached and referred to and made a part hereof.

(3) That the effective date of General Order No. 102 is hereby fixed as the first day of April, 1956. ✓

(4) That this Commission Investigation be and it hereby is discontinued. ✓

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 9<sup>th</sup> day of January, 1956.

John E. McMillan  
President

Justus D. Casanova

Roy G. Lutermeier

Marion J. Shaly

B. Howard  
Commissioners

APPEARANCES

- J. J. Deuel, 2223 Fulton St., Berkeley 4, Calif., appearing for California Farm Bureau Federation, interested party.
- Arlo D. Poe, 639 So. Spring St., Los Angeles; J. C. Kaspar, 417 Market St., San Francisco, appearing for California Trucking Associations, Inc., interested party.
- Phil Jacobson, 510 W. 6th St., Los Angeles, appearing for Robertson Truckaways, and Hadley Auto Transport, respondents.
- Norman R. Moon, 856 Trestle Glen Road, Oakland 10, Calif., appearing for Cooper Transportation Co., Inc.; Cunha Transportation Co.; M & L Trucking Co.; and Loretz & Co., interested parties.
- Clarence R. Greenup, Arcata, Calif., appearing for United Log Truckers Ass'n., Inc., interested party.
- Lester J. Monroe, 970 South Broadway, Coos Bay, Oregon, appearing for United Log Truckers Ass'n., Inc., of Calif., interested party.
- Phillip J. Roth, 710 Cascade Building, Portland, Oregon, appearing for United Log Truckers of Calif., interested party.
- E. O. Blackman, 604 N. Atlantic Blvd., Monterey Park, Calif., appearing for California Dump Truck Owners Ass'n., interested party.
- Richard A. Williams, 405 Montgomery St., San Francisco, appearing for Surety Ass'n. of Northern California, interested party.
- James M. Jones, Pier 14, San Francisco, appearing for Railway Express Agency, interested party.
- F. A. Paras, 1201 - 3rd St., Oakland, Calif., appearing for Sterling Transit Co., Inc., interested party.
- Chas. Giovannoni, P. O. Box 431, Antioch, Calif., appearing for Cecchini Trucking Co., interested party.
- Natalie Gail, 165 O'Farrell St., San Francisco 2, Calif., appearing for Gale Messengers, respondent.
- C. A. Millen, 2337 Railroad Ave., Fresno, Calif., appearing for Kings County Truck Lines, interested party.
- R. M. Carroll, B & Cradnock Sts., Yuba City, appearing for Associated Transportation, Inc., interested party.
- H. P. Moore, 190 - 98th Ave., Oakland 3, Calif., appearing for Morris Draying Co., interested party.
- Guy Warren, Box 59, Hayward, Calif., appearing for Warren Transportation Co., interested party.
- Chet C. Smith 71 Garden Grove Drive, Daly City, appearing for Independent Dump Truck Owners Association, interested party.
- William G. Risdon, 405 Montgomery St., San Francisco, Calif., appearing for Surety Industry, interested party.
- Frank Hood, 1415 Scott St., San Francisco, appearing for himself, respondent.
- A. F. Schumacher & D. N. Kujachich, 350 Sansome St., San Francisco, appearing for Owens-Illinois Glass Co., Pacific Coast Division, interested party.
- Les Calkins, 504 E. Elm St., Lodi, Calif., appearing for Les Calkins Trucking, interested party.
- Harold Shifflet, Rt. 2, Box 136, Gridley, Calif., appearing for Shifflet Bros., interested party.

COMMISSION'S STAFF:

Floyd McColl and W. R. Roche

GENERAL ORDER NO. 102

RULES

TO GOVERN BONDING REQUIREMENTS IN  
CONNECTION WITH SUBHAULING  
OR LEASING OF EQUIPMENT

ISSUED AS APPENDIX "A"  
(Consisting of 4 pages)

To Decision No. 52462

Dated January 9, 1956  
In Case No. 5670



## GENERAL ORDER NO. 102

## RULES

TO GOVERN BONDING REQUIREMENTS IN  
CONNECTION WITH SUBHAULING  
OR LEASING OF EQUIPMENT

## 1. CARRIERS SUBJECT TO THIS ORDER:

This General Order applies to Radial Highway Common Carriers and Highway Contract Carriers. Every carrier subject to this General Order shall clearly mark all shipping documents pertaining to any shipment that is subhauled or carried in a leased vehicle, so as to show the authority under which it is carried. Such marking shall be by means of printing, typewriting, rubber stamp or other device of equal clarity.

## 2. DEFINITIONS:

- a. PRIME CARRIER (principal or overlying carrier) means a carrier who or which contracts with a shipper to provide transportation service for the latter, but, in turn, engages the services of another carrier known as the subhauler (underlying carrier) to perform that service.
- b. SUBHAULER (underlying carrier) means any carrier who renders service for a prime carrier (principal or overlying carrier), for a specified recompense, for a specified result, under the control of the overlying carrier as to the result of the work only and not as to the means by which such result is accomplished.
- c. LEASE MEANS A CONTRACT by which any person, firm or corporation, who or which owns, controls or is entitled to the possession of any vehicle or vehicles of the types described in Section 3510 of the Public Utilities Code, called the lessor, lets or hires the same to any carrier subject to the provisions of this general order, called

2. DEFINITIONS--Cont'd.

the lessee, for the purpose of having such vehicle or vehicles used in the for-hire transportation business of such lessee.

- d. COMPLETION OF SHIPMENT by a subhauler means that the transportation agreed to be performed by such subhauler has been performed in full and evidenced by delivery of the receipted bill of lading or other written shipping document or documents relating to such transportation to the prime carrier. In the event that a contract of subhauling contemplates services over a period greater than one calendar month the subhauler shall be entitled to payment for his services on a monthly basis for the purpose of determining the date on which a claim may be filed under Section 3c hereof.
- e. TERMINATION OF LEASE occurs when the period covered by the contract of lease has expired as evidenced by the terms thereof.
- f. CLAIM means a demand by a subhauler for an amount due for the transportation of property, from the carrier for whom subhauling has been performed; or by a lessor for an amount due as equipment rental from the carrier to whom such equipment has been leased.

3. BONDING REQUIREMENTS:

- a. No radial highway common carrier or highway contract carrier shall engage any subhauler or lease any equipment as a lessee unless and until it has on file with the Commission a good and sufficient bond in such form as the Commission may deem proper, in a sum of not less than five thousand dollars (\$5,000), which bond shall secure the payment of claims of subhaulers and lessors of highway carriers in accordance with the terms of paragraphs b, c, d and e hereof.

3. BONDING REQUIREMENTS--Cont'd.

- b. The bond required by paragraph (a) hereof shall be filed by the carrier as principal and by a qualified surety insurer, authorized to do business in the State of California, as surety, payable to the people of the State of California, for the benefit of any person, firm or corporation serving as a subhauler for or as a lessor of equipment to, said carrier.
- c. A subhauler or lessor of equipment to whom an amount may be due, either as transportation charges for any shipment subhauled or as the rental of any equipment leased, and not paid on or before the 25th day of the calendar month next following the calendar month in which (1) completion of shipment as defined in Section 1(d), (2) termination of lease as defined in Section 1(e), or (3) the date on which any payment falls due under the terms of a subhauling or leasing agreement, occurred, may file a claim therefor with the surety and notify the Commission of such filing against the bond herein required. All such claims must be filed within 120 days after the date of completion of shipment or termination of lease or after the date on which any payment falls due under the terms of any subhauling or leasing agreement.
- d. Upon any claim filed under Section 3575 of the Public Utilities Code or this general order, suit must be filed within one year after the filing of such claim as provided in Section 3(c) hereof.
- e. The surety may cancel such bond by written notice to the Public Utilities Commission of the State of California at its office in San Francisco, such cancellation to become effective thirty days after receipt of said notice by the Commission.

4. AGREEMENT BETWEEN PARTIES:

- a. Every agreement for subhauling and for leasing of motor vehicles entered into by a radial highway common carrier or highway contract carrier shall be in writing and signed by the parties prior to, or within five days after, the commencement of any subhaul service or lease of equipment. Such writing shall contain all of the terms of such agreement and shall specify all charges payable thereunder for subhaul service or lease of equipment.
- b. A copy of each agreement shall be retained and preserved by all parties thereto, subject to the Commission's inspection, for a period of not less than three years from the date of execution.

5. EFFECTIVE DATE:

The effective date of this general order shall be the first day of April, 1956.