

Decision No. 55670**ORIGINAL**

## 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 Sections 3575 and 1074, )  
 including amount, form and content of )  
 bond required thereby. )

Case No. 5670

Appearances as of September 4, 1957.

Natalie Gail, for Gale Messengers, respondents.  
W. F. Stone, for Alexander, Bacon and Mundhenk;  
A. J. Mateik, for California Trucking  
 Associations, Inc., E. O. Blackman, for  
 California Dump Truck Owners' Association,  
 interested parties.  
William R. Roche, for the Commission staff.

INTERIM OPINION

The 1955 session of the Legislature enacted Section 3575 of the Public Utilities Code.<sup>1</sup> The purpose of the section was to require radial highway common and highway contract carriers to file surety bonds to secure obligations incurred by such carriers to those who subhailed for, or leased equipment to them.

The instant case was instituted for the purpose of determining procedure for administering Section 3575. After public hearings the Commission issued its Decision No. 52462 on January 9, 1956, establishing a General Order, No. 102, requiring that a \$5,000 bond be filed for this purpose.

The 1957 session of the Legislature has added Section 1074 to the Code. This section is identical in its wording with Section 3575 except that it applies to highway common carriers and petroleum irregular route carriers instead of the types of carriers mentioned in the latter section.

---

1. Hereinafter referred to as the Code.

Accordingly, on August 20, 1957, the Commission reopened and amended the investigation to include Section 1074 within the scope of inquiry. The broadened investigation was heard on September 4, 1957, before Commissioner Fox and Examiner Power. The matter was continued to a date to be set. In the meanwhile, an interim order will issue adding highway common and petroleum irregular route carriers to the types of carriers enumerated in General Order No. 102 and such Order renumbered 102A.

The evidence and statements made at the hearing clearly indicate that the \$5,000 minimum limit for the bonds has proved reasonably satisfactory in practice. General Order No. 102 contains certain language affecting the wording of bonds filed in pursuance of its provisions. The Commission is of the opinion that the fixing of precise phraseology for these bonds is not an essential function of this General Order, accordingly this language will be omitted from General Order No. 102A.

A number of questions raised at the hearing will not be discussed in this interim order. For the most part they concern administration of the Code sections and the General Order. Some of the questions thus raised appear to be of sufficient importance to justify the Commission in holding further hearings in the present investigation at a later date.

The Commission finds first, that the just and reasonable amount for the bond required by Section 1074 of the Public Utilities Code is \$5,000; second, that a General Order to be designated as General Order No. 102A of this Commission should issue in the form shown on Appendix A attached hereto; third, that the provisions of General Order No. 102A are reasonable and will give effect to the legislative intent as expressed in Sections 1074 and 3575 of the Public Utilities Code.

INTERIM ORDER

Investigation having been instituted, public hearings held, and this matter having been submitted, reopened and further hearing held, now therefore,

IT IS ORDERED:

(1) That \$5,000 be and it is fixed as the amount of the bonds referred to in Sections 3575 and 1074 of the Public Utilities Code.

(2) That General Order No. 102A of this Commission is hereby established to read as shown in Appendix A hereto attached.

(3) That General Order No. 102 is hereby revoked, such revocation to take effect on the date when General Order No. 102A takes effect; provided however, that all provisions of General Order No. 102A which are similar to provisions of General Order No. 102 shall be construed to be continuations thereof and not as new requirements.

(4) That the effective date of General Order No. 102A is hereby fixed as the first day of November, 1957.

(5) That this Commission investigation be and it is continued in pending status.

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

Dated at San Francisco, California, this 9th day of OCTOBER, 1957.

[Signature]  
President  
[Signature]  
[Signature]  
[Signature]  
[Signature]  
Commissioners

GENERAL ORDER NO. 102A

Public Utilities Commission of the  
State of California

Rules to Govern Bonding Requirements in Connection  
with Subhauling or Leasing of Equipment

Adopted 1957. Effective November 1, 1957.  
Decision No. 55670, Case No. 5670

1. CARRIERS SUBJECT TO THIS ORDER:

This General Order applies to Highway Common Carriers, Petroleum Irregular Route Carriers, 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 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 3(c) 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 highway common carrier(s), petroleum irregular route carrier(s), radial highway common carrier(s) or highway contract carrier(s) 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 \$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.

APPENDIX A  
Page 2 of 2

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, 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 2(d), (2) termination of lease as defined in Section 2(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 Sections 1074 and 3575 of the Public Utilities Code or this general order, suit must be commenced 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 highway common carrier, petroleum irregular route carrier, 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 November, 1957.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA  
By: R.J.Pajalich, Secretary