

ORIGINAL

Decision No. 68554

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on)
the Commission's own motion to determine)
procedure and rules for the administration)
of Public Utilities Code Sections 3575 and)
1074, including amount, form and content)
of bond required thereby.)

Case No. 5670

OPINION AND ORDER

By Decision No. 55670 dated October 8, 1957, in this proceeding, the Commission established bonding requirements for certain types of highway carriers who employed subhaulers or leased equipment.

It appearing that Statutes 1963, Chapter 2147, effective September 20, 1963 amended Sections 3575 and 1074 of the Public Utilities Code to include new classes of carriers, it is necessary to make certain revisions of General Order No. 102-A.

The Commission finds that the general order set forth hereinafter should be adopted. General Order No. 102-A will be cancelled and superseded by the general order adopted herein. The following order will provide for its adoption. A public hearing is not necessary.

Good cause appearing,

IT IS ORDERED that:

1. General Order No. 102-B, which is attached hereto and by this reference made a part hereof, is hereby adopted to become effective February 1, 1964, superseding General Order No. 102-A, which is hereby cancelled effective February 1, 1964.

2. The Secretary of the Commission shall serve a copy of this order upon each highway carrier described in Sections 3575 and 1074 of the Public Utilities Code.

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

Dated at San Francisco, California this 27th day of December, 1963.

William W. Bennett
President

Walter S. Page

George L. Dwyer

Fredrick B. Halbach

Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.

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Appendix A
GENERAL ORDER NO. 102-B
(Supersedes General Order No. 102-A)

PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA

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

Adopted Dec. 27, 1963. Effective February 1, 1964
Decision No. 6855. Case No. 5670

1. Carriers Subject to this Order:

This General Order applies to Highway Common Carriers, Petroleum Irregular Route Carriers, Cement Carriers, Radial Highway Common Carriers, Highway Contract Carriers and Cement 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), cement carrier(s), radial highway common carrier(s), highway contract carrier(s) or cement 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

- 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, cement carrier, radial highway common carrier, highway contract carrier or cement 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 February, 1964.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

By: Noel Coleman, Acting Secretary