

Decision No. 66783**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

E. O. Blackman, for California Dump Truck Owners
Association, petitioner.
Phil Jacobson, for Overlying Carriers Chapter,
protestant.
James Quintrall, Arlo D. Poe, J. C. Kaspar and
C. D. Gilbert, for California Trucking Associ-
ation, and Robert C. Sellers, for Southern
California Surety Underwriters Association,
interested parties.
Leonard Diamond, for the Commission staff.

O P I N I O N

The purpose of the present reopening of Case No. 5670 is to secure an increase of the amount of subhaul bonds. These bonds have been required since Section 3575 was added to the Public Utilities Code in 1955. The amount of the obligation is determined by the Commission above a statutory minimum of \$2,000. The amount currently required is \$5,000.^{1/} The petitioning association seeks to increase this to \$50,000.

The requirement of a surety bond to protect subhaulers and lessors applies to almost all carriers. However, it is in the field of dump truck operation that the most acute irritations seem to arise. The instant petition was filed by the largest association in that field on January 7, 1963.

^{1/} By General Order No. 102-B.

Public hearings were held before Examiner Power in Los Angeles on May 23 and 27 and in San Francisco on August 23, 1963. On the last named date the matter was submitted and is now ready for decision.

It appears that in the contracting business subhaulers are frequently used. The contractor engages an overlying carrier to handle his dump truck operations. This overlying carrier, usually called a "broker" in the trade, engages and pays the subhaulers who do some part or all of the actual moving of the commodities.

Item No. 45 of Minimum Rate Tariff No. 7 permits the extension of credit for periods of 20 to 50 days. The effect of these unusually long credit periods is directly related to the subject matter of this case.

The petitioning association presented four witnesses. One was a subhauler, one a broker and two were officers of the association. The sense of their testimony may be summed up as follows. Subhaulers are small operators. They cannot afford to take substantial losses. If such losses are sustained the result may be the loss of their truck or trucks or loss of credit with fuel suppliers. The first would be fatal and the second very serious.

Brokers, the witnesses said, are not adequately screened by bonding companies. Persons have been able to obtain bonds who have only limited assets if, indeed, they have any. There have been cases where the broker incurred claims far in excess of \$5,000 and far in excess of the broker's capacity to pay amounts in excess of \$5,000. Losses have been suffered that are far beyond the capacity of these subhaulers to endure.

The petitioner's witnesses were of the opinion that an increase in the bond amount would benefit the subhaulers directly by providing a larger fund for their benefit and, indirectly, by leading to a tighter screening of aspiring brokers.

The Commission staff presented a witness from the surety bond business who testified respecting technical aspects of the petition. He testified that collateral security would almost certainly be demanded from applicants for bonds in excess of \$5,000. Premiums, being based on the amount of bonds, would automatically increase, since the rate would be, at least, the same. It (the rate) might, in fact, increase. He agreed that the screening would be more searching as the amount of the bond went up.

The tenor of the testimony of these five witnesses suggests that an increase in the amount of these bonds would, or at least could, eliminate certain brokers from that field. The testimony does not even suggest the number who might be eliminated, nor what the impact on the contracting industry might be.

A group of brokers appeared by attorney at Los Angeles. They presented no evidence but strenuously cross-examined the witnesses. At the conclusion of the second Los Angeles hearing they moved to dismiss the petition.

Two brokers did testify at the San Francisco hearing. They were opposed to the entire bonding plan. They proposed a system of credit investigations to be made by the Commission. It goes without saying that they were opposed to any increase in the bond. Their own proposal would require action by the Legislature.

It is notable that all of the brokers who appeared in any way, with one exception, were opposed to the petition. The petitioner was clearly speaking for the subhaulers' interest.

In some respects the record is inconclusive. There is an entire absence of any evidence showing the actual impact of bond increases on brokers. There is no evidence that would inform us of the number of brokers who would be eliminated by an increase to \$50,000. To be sure, there were certain speculations, but these were not sufficiently definite to support a conclusion. There was virtually no evidence, even speculative, on the possible impact of increases to amounts less than \$50,000.

It may be that the most effective protection for sub-haulers could be obtained by some modification of the credit rule (Item No. 45) in Minimum Rate Tariff No. 7. This tariff is before the Commission in another case and will not be further discussed here.

The record before the Commission will not justify an increase in the amount of the subhaul bond required by Sections 3575 and 1074 of the Public Utilities Code and by General Order No. 102-B on traffic subject to rate regulation under Minimum Rate Tariff No. 7.

The Commission concludes that the Petition for Modification of Decision No. 55670 should be denied.

O R D E R

IT IS ORDERED that the Petition for Modification of Decision No. 55670 filed herein on January 7, 1963 is denied.

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

Dated at San Francisco, California, this 11th day of February, 1964.

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.

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

Walter H. [Signature] President
George H. Grover
Fredrick B. Holshoff