

ORIGINAL

Decision No. 72365

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

Oral I. Groff, for Fosters Transfer & Storage; Richard H. Murphy, for Richmond Crane Rigging and Drayage; and Cromwell Warner, for Camall Service, respondents.
Brundage and Hackler by Daniel Feins, for Western Conference of Teamsters; E. O. Blackman, for California Dump Truck Owners Association; Lelio Giorgi, Arlo D. Poe, H. F. Kollmyer, and J. C. Kasper, for California Trucking Association; G. Ralph Grago, for Associated Independent Owner-Operators; James Quintrall, for Los Angeles Warehousemen's Association; Harry C. Phelan, for California Asphalt Pavement Association; Milton W. Flack and Don B. Shields, for Highway Carriers Association; J. R. Drollinger, for Highway Carriers Association and Mantes Delivery Service; Keith E. Miller, for Miller Traffic Service, Inc.; and Fred Imhof, for Southern California Rock Products Association, interested parties.
Elinore C. Morgan and H. L. Farmer, for the Commission staff.

WPA

WPA

O P I N I O N

Public hearings were held before Examiner Power at San Francisco on May 11, and at Los Angeles on August 17 and November 3, 1966. The matter was submitted on the last date subject to the privilege of filing later statements of position. These have been received and the matter is ready for decision.

Certain carrier groups which participated actively will be referred to by initials, viz California Trucking Association (CTA); California Dump Truck Owners Association (CDTOA); Associated Independent Owner-Operators, Inc. (AIOO); Highway Carriers Association (HCA) and the Western Conference of Teamsters (WCT).

The major proposal of WCT was that the Commission should file suits on behalf of unpaid subhaulers. Aside from the fact that the expense would be prohibitive, this proposal has no support in the evidence. There is no evidence, for example, that subhaulers have not been able to procure legal representation.

In this connection the sole staff proposal was an amendment to the General Order which would make failure to pay a violation thereof. This will allow the Commission to take appropriate action to impose sanctions on defaulting carriers.

All four of the carrier organizations wanted to change the minimum penalty in the bonds. CTA wanted a minimum of \$15,000 or less. CDTOA wanted a \$20,000 minimum, AIOO sought \$25,000, and HCA proposed a sliding scale with a minimum of \$2,000. The amount of the bond would equal the average of the outstanding balance of subhaul liability at the end of each month during the previous year.

The last proposition cannot be adopted. Such a system would have to be policed and the cost of policing is not ascertained. Another objection to it is that it would establish a bad regulatory policy. The heavier burden would fall on the larger carriers, including the carriers of general commodities. It is precisely these carriers which have given the least trouble in the past. Many of them would be subjected to bonds of astronomical size. The effect on the transportation structure of such an imposition has not been studied and cannot be calculated.

It will have been noted that the other three carrier groups all recommended a fixed amount larger than the present \$5,000. A judgment so widely spread in the industry is very persuasive with the Commission. We propose, however, to proceed

with caution. Undoubtedly some who now can get \$5,000 bonds will be unable to procure larger ones. We do not know how large this group is. We, therefore, have decided to take one step. The bond will be increased to \$10,000.

CTA and AIOO proposed that the form of bond should include a waiver by the surety of its rights under Section 2845 of the Civil Code. This section requires that claimants proceed first against the principal before they can reach the surety. In a great many cases the prime carrier defaults because his shipper has defaulted as to him. There seems to be no useful purpose to be served by requiring claimants to waste time and money in the pursuit of an unobtainable remedy. This suggestion will be adopted.

A proposal was made that when a prime carrier defaulted, those injured might file a written complaint with the Commission. On receipt of such a complaint the Commission must order an investigation. Such an abdication of the Commission's discretion is of doubtful legality but in any event it would be a most unwise thing to do. This proposal will not be adopted.

Another suggestion received was that the bond should be non-cancellable for one year. There is no evidence in the record to show that the surety companies would be willing to write such a bond. Absent the necessary showing this suggestion cannot be adopted.

The Commission finds that:

1. To carry out the legislative intent embodied in Sections 1074 and 3575 of the Public Utilities Code it is necessary:
 - (a) To increase the penalty amount of the bond for the protection of subhaulers, sub-subhaulers and lessors to \$10,000.

- (b) To include in General Order No. 102-C, a Commission Order requiring payment of sums due subhaulers, sub-subhaulers and lessors promptly when such sums become due and payable.
- (c) To include sub-subhaulers in the protection provided by General Order No. 102-C.

2. The record does not justify an assumption by the Commission of the duty to provide legal representations to bond claimants.

3. The record does not justify an abatement of the Commission's discretion respecting the institution of orders of investigation.

4. The record does not justify any change in the bond cancellation provisions in the General Orders.

The Commission concludes that General Order No. 102-B should be superseded by General Order No. 102-C as attached to the following order.

O R D E R

IT IS ORDERED that:

1. General Order No. 102-C, which is attached hereto and by this reference made a part hereof, is hereby adopted to become effective September 1, 1967, superseding General Order No. 102-B, which is cancelled effective September 1, 1967.

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

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

Dated at San Francisco, California, this 2nd day of MAY, 1967.

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

Commissioner A. W. Gatov, being necessarily absent, did not participate in the disposition of this proceeding.

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

PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA

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

Adopted May 2, 1967, Effective September 1, 1967
Decision No. 72365, Case No. 5670

1. Carriers Subject to this Order:

This General Order applies to all carriers as defined herein. 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. Carrier means all Highway Common Carriers, Petroleum Irregular Route Carriers, Cement Carriers, Radial Highway Common Carriers, Highway Contract Carriers and Cement Contract Carriers.
- b. 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. The term prime carrier also includes any subhauler who engages other carriers to perform all or part of the services which such subhauler has agreed to render for a prime carrier. Such an engaged carrier is designated as a sub-subhauler and as to it, the original subhauler is a prime carrier.
- c. 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. This term includes sub-subhaulers in appropriate cases.

- d. 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.
 - e. Completion of shipment by a subhauler or sub-subhauler means that the transportation agreed to be performed by such subhauler or sub-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 or sub-subhauling contemplates services over a period greater than one calendar month the subhauler or sub-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 5 (c) hereof.
 - f. Termination of lease occurs when the period covered by the contract of lease has expired as evidenced by the terms thereof.
 - g. Claim means a demand by a subhauler or sub-subhauler for an amount due for the transportation of property, from the carrier for whom subhauling or sub-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. Agreement Between Parties:
- a. Every agreement for subhauling, sub-subhauling or leasing of motor vehicles entered into by a carrier shall be in writing and signed by the parties prior to, or within five days after, the commencement of any subhaul or sub-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 or sub-subhaul service or lease of equipment, and shall include the name and address of the surety providing the bond required therein as well as the expiration date of such bond.
 - 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.

4. Payments to Subhauler, Sub-Subhauler or Lessor of Equipment:

The prime carrier or lessee shall pay to the subhauler, sub-subhauler or lessor of equipment the charges specified in the written agreement on or before the 20th day of the calendar month following the (1) completion of shipment as defined in Section 2 (e) hereof or (2) termination of lease as defined in Section 2 (f).

5. Bonding Requirements:

- a. No carrier shall engage any subhauler, or sub-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 \$10,000, which bond shall secure the payment of claims of subhauler, sub-subhaulers and lessors of highway carriers in accordance with the terms of paragraphs b,c,d,e,f and g hercof.
- b. Each bond filed pursuant to the foregoing shall cover the full extent of the carrier's operations; that such a bond may cover more than one operative authority held by the same carrier; that when a carrier with such a bond on file with the Commission obtains additional operative authority, said bond shall be revised or reissued to cover the additional operative authority; and that the name of the carrier's surety company in any bond filed pursuant hereto will be made public by the Commission upon reasonable request therefor.
- c. The terms of the bond shall include: that any person or persons to whom an amount may be due and payable may file a claim therefor with the surety; that upon the filing of the claim, the surety shall notify the Commission and the carrier in writing of such filing; that such notification to the Commission shall be addressed to the Public Utilities Commission of the State of California at its office in San Francisco; that suit against the surety shall be commenced within one year after the filing of said claim; and that the surety waives any rights it may have under Section 2845 of the Civil Code of the State of California.

- d. 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 sub-hauler or sub-subhauler for or as a lessor of equipment to, said carrier.
- e. A subhauler, sub-subhauler or lessor of equipment to whom an amount may be due, either as transportation charges for any shipment subhailed or as the rental of any equipment leased, and not paid within the time period provided in Section 4 hereof, 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 Section 4 hereof.
- f. 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 30 days after receipt of said notice by the Commission.

6. Effective Date:

The effective date of the General Order shall be the 1st day of September, 1967.

PUBLIC UTILITIES COMMISSION OF THE

STATE OF CALIFORNIA


By: WILLIAM W. DUNLOP, Secretary