

ORIGINAL

Decision No. 77072

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion as to the establish-  
ment of rules governing the  
leasing of Motor Vehicles by  
highway carriers to other highway  
carriers or to city carriers or  
to any other persons or corpora-  
tions.

Case No. 8481  
(Filed July 19, 1966)  
(Amended April 4, 1967)

(Appearances listed in Appendix D)

O P I N I O N

On July 19, 1966, the Commission issued an order of investigation to determine whether rules should be established to govern motor vehicle lease arrangements by highway carriers to other highway carriers or to city carriers or to any other persons or corporations. On April 4, 1967 this order was amended to include lease arrangements by shippers to highway carriers or city carriers.<sup>1/</sup>

Public hearings were held before Examiner Robert Barnett in San Francisco on October 19, 1966 (with Commissioner Frederick B. Holoboff presiding), December 5 and 6, 1966, March 28 and 29, 1967, June 6, 1967, October 18, 1967, and January 19, 1968, and in Los Angeles on April 11, 1967. On January 19, 1968 the matter was submitted subject to the filing of briefs. A Proposed Report was issued on September 23, 1968 to which interested parties filed exceptions and replies to exceptions.

1/ The City Carriers' Act (Public Utilities Code Sections 3901-4149) was repealed 1968 (Ch. 1007).

Staff Evidence

The staff presented one witness, a Senior Transportation Representative, in support of its proposed general order to govern the leasing of motor vehicles.<sup>2/</sup> He testified to the need for an order setting forth standards to be followed when leasing motor vehicles. In his opinion such an order would:

1. Implement Public Utilities Code Sections 3547, 3548, 3549, and 3550 (Added 1963, Ch. 1576).<sup>3/</sup>

Section 3547: The Commission may regulate the leasing of motor vehicles by highway carriers to other highway carriers or to city carriers or to any other persons or corporations.

Section 3548: The leasing of motor vehicles for the transportation of property to any person or corporation other than to a highway carrier, is prohibited as a device or arrangement which constitutes an evasion of this chapter, unless the parties to such lease conduct their operation according to the terms of the lease agreement, which shall be in writing, and shall provide that the vehicle shall be operated by the lessee or an employee thereof and the operation and use of such vehicle shall be subject to the lessee's supervision, direction, and control for the full period of the lease. The lessor or any employee of the lessor shall not qualify as an employee of the lessee for the purposes of this section. The provisions of this section shall not apply to the leasing of motor vehicles to the State, a city, a county, or a city and county.

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<sup>2/</sup> Exhibit No. 1-C set out in Appendix A.

<sup>3/</sup> All references to Code sections are to the Public Utilities Code unless otherwise stated.

Section 3549: Any person or corporation engaged in any business or enterprise other than the transportation of persons or property who also transports property by motor vehicle for compensation shall be deemed to be a highway carrier for hire through a device or arrangement in violation of this chapter unless such transportation is within the scope and in furtherance of a primary business enterprise, other than transportation, in which such person or corporation is engaged.

Section 3550: "Device or arrangement," as used in this chapter, means and includes any and all methods, means, agreements, circumstances, operations, or subterfuges under which any person or corporation undertakes for hire to conduct, direct, control, or otherwise perform, the transportation by motor vehicle of property upon the public highways of this State.

2. Guide the Commission employees who provide information concerning leasing in response to questions from the trucking industry and the public.
3. Set standards to aid in distinguishing between a bona fide lease arrangement and a transportation contract such as a subhaul agreement.
4. Prevent use of a purported lease as a device to rebate shipping charges or evade minimum rates, for example:
  - a. When a shipper leases equipment to a carrier at high rates. In Re MacDonald & Dorsa Transportation Co. (1965) 64 CPUC 340 this Commission held that a purported lease by which a shipper of sand and gravel leased trailers to a carrier employed by the shipper for a rental equal to 33-1/3 percent of the gross revenue derived from the use of said equipment was a device to obtain transportation at rates less than the minimum provided by Minimum Rate Tariff No. 7. In this case the Commission found that the initial cost of each trailer was approximately \$12,000, and each had a service life of approximately eight years. Pursuant to the purported leases approximately \$8,000 in trailer rental was collected for each trailer in one year of operations.

- b. When a carrier leases equipment to a shipper at low rates. This is merely a variation of paragraph a.
  - c. When subhaulers lease their equipment to a shipper or carrier, become employees of said shipper or carrier, and the total amount received for wages and equipment rental is less than that provided for in the applicable minimum rate tariff. (See Re Fitzgerald Trucking (1963) 61 CPUC 571 and Re Webster H. Tennis (1964) 63 CPUC 665, where such arrangements were held to be devices to evade minimum rates; cf. United States v Drum (1962) 368 US 370, 7 L ed 2d 360.)
  - d. When a carrier leases equipment to a subhauler at high rates. This is merely a variation of paragraph c.
- 5. Prevent use of a lease arrangement to avoid payment of taxes. (See Service Tank Lines v Johnson (1943) 61 Cal App 2d 67.)
  - 6. Provide for reasonable compensation to the lessor to assure that the motor vehicle is properly maintained.
  - 7. Avoid case by case adjudication of what constitutes a valid lease.

The witness testified that between 1953 and 1962 he reviewed over 2,000 leasing arrangements; approximately 75 percent between carriers and 25 percent between a carrier and a shipper. He and other staff members had no criteria on which to base judgments as to the validity of the leases other than the few cases on the subject plus their knowledge of the industry. This situation was improved in 1963 with the passage of the motor vehicle leasing statute, but in the witness's opinion more clarification is needed. The witness asserts that his proposed order will prevent rate

violations and will provide guidance to the staff, the public, and the transportation industry. However, in case of conflict between the proposed order and the provisions of a minimum rate tariff, the witness feels that the tariff should prevail. His proposal will be discussed in detail below.

Other than a half dozen cases over the course of thirty years the witness cited no instances of attempts to evade the minimum rates or provide rebates through the use of leases.<sup>4/</sup> The witness made no study of current operational problems relating to leasing in the trucking industry or any particular segment thereof, and no study of the costs to the carriers and shippers inherent in complying with his proposed order.

California Trucking Association Evidence

The California Trucking Association (CTA), an interested party, presented one witness, its legal representative, who proposed an alternate general order<sup>5/</sup> to that proposed by the staff. He testified that the CTA proposed general order was formulated by the Standing Rate Committee of the CTA after numerous meetings throughout the state. This committee is composed of 35 to 40

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<sup>4/</sup> Since the hearings the Commission has decided at least two cases involving the use of lease agreements to violate the minimum rates (Investigation of J & H Transportation, Decision No. 76737 dated February 3, 1970 in Case No. 8892; Investigation of Federal Cement, Decision No. 76621 dated December 30, 1969 in Case No. 8893); and there is at least one case pending (Investigation of F. M. Wert Trucking, Case No. 9038). ✓

<sup>5/</sup> Exhibit No. 5 set out in Appendix B.

representatives of various segments of the for-hire trucking industry and reflects as near a cross section of the views of the trucking industry as can be obtained. The committee excluded from its consideration any regulation of the leasing of equipment by shippers to carriers because, in its opinion, the subject of leasing by shippers to carriers is not within the authority granted to the Commission by sections 3547-3550.

The witness testified that the CTA proposal would assist the Commission in distinguishing between a lease and a transportation contract or any other kind of arrangement, and will minimize the opportunities for evasion of regulation. The cost incurred in complying with the CTA's proposals would be negligible and service to the public would not be affected. The witness testified that leasing regulations covering all carriers are needed only to the extent of requiring leases to be in writing, naming the parties, the duration, and the compensation to be paid; more detailed regulation of any individual segment of the industry should be dealt with in the minimum rate tariff applicable to such segment, as in tariffs Nos. 7, 10, and 17. The CTA proposal will be discussed in detail below.

#### Evidence of Other Interested Parties

Not all of the interested parties that participated presented testimony concerning practices in the industry; some just stated their position and offered legal argument.

A representative of the Dow Chemical Company testified in support of the CTA proposal because it leaves "the leasing of highway nonself-propelled trailing equipment from a shipper to a carrier exempt from leasing regulations." He testified that his industry has unique problems. His company does not own tractors. However, it purchased four rubber-lined semitrailers that are used in transporting corrosive chemicals requiring cargo tanks that meet Interstate Commerce Commission (ICC) regulations. This purchase was made because of the reluctance of carriers to invest in special equipment that could only be used to haul specific products with limited markets. The trailers are loaned or leased to for-hire carriers. The cost and maintenance of the equipment is high, particularly the rubber linings. A thirty-day lease, as proposed by the staff, would cause a loss of flexibility in the use of this equipment which, in turn, would jeopardize the company's market position. There is also a problem connected with the business of acidizing oil wells. These jobs are performed throughout California, and always at sites where there are absolutely no rubber-lined, stationary storage facilities. Dow's trailers are dispatched to these job sites and are parked for indefinite periods, acting as mobile storage units. Because many factors will determine the rate of acid consumption, it is not possible to anticipate whether the trailer will be in use at the job site for a day, a week, a month, or longer. To execute a lease which places the equipment in the exclusive possession, use, or control of the carrier would belie the practicalities of the situation.

Further, it is improbable that a carrier would accept complete responsibility for the equipment during the period it was parked at the job site during the lease period. In the witness's opinion there have been no abuses in his industry connected with leasing of trailers. There are no minimum rates on chemicals in bulk tank trucks. A representative of Allied Chemical Corporation testified in a similar vein.

A representative of Kaiser Sand and Gravel Company and the Northern California Ready-Mix Concrete Association requested that the definition of motor carriers in the proposed leasing regulations exclude the transportation of concrete which is mechanically mixed in transit. He testified that the ready-mix concrete industry uses specially designed equipment and specially trained drivers to haul their product. The ingredients of the concrete are assembled at a batch plant and put into the mixer truck. The truck then hauls the material to the job site and mechanically mixes it enroute. The truck must unload its product within 45 minutes of loading to insure that the concrete does not harden in the mixer. This factor limits the radius of the trucks from the batch plant to about 6 miles in the city and about 15 miles in the country. Although this carriage is primarily proprietary, on occasion, to take care of peak demands, trucks must be borrowed from other ready-mix concrete producers. The borrowing is usually for a period of from two hours to one day. In 1966 such borrowed equipment hauled approximately one percent of the volume of Kaiser Sand and Gravel. When a truck is borrowed



its regular driver operates the truck. The borrowing company pays the lending company rates based on the hours worked, which rate includes the use of truck and driver. In the witness's opinion, the fluctuations in the business are such that it would be impractical to lease a truck for a period of thirty days or more. Kaiser Sand and Gravel has permits from this Commission and pays transportation taxes on the hourly rates which it receives for the renting of its trucks with driver to other producers. Representatives of the Pre-mixed Concrete Company, H. G. Fenton Materials Company, San Diego Rock Producers Association, and the Southern California Ready-Mix Concrete Association testified in a similar vein.

A representative of various cement carriers testified in support of the CTA proposal. He testified that his industry operates within the rules established in Minimum Rate Tariff No. 10 covering the transportation of cement. Said tariff requires an overlying carrier to pay 100 percent of the charges applicable under the minimum rates prescribed in the tariff, less gross revenue taxes. It also provides: no lease of trailer equipment shall provide for the payment of rental in excess of 9 percent of the minimum rate charges; no lease of trailer equipment shall be for a term of less than thirty days; no carrier shall lease any power equipment, or combination of power and trailer equipment, for a period of less than thirty days; and no power, or combination of power and trailer equipment shall be leased on the basis of percentage of gross revenue. In the witness's opinion the effect of these provisions

has been to eliminate leasing and subhauling by independent owner-operators in the cement industry. This has been beneficial to the cement industry carriers as it has eliminated methods for evading minimum rates. The witness wants a provision in any general order issued in this proceeding to state that provisions in minimum rate tariffs concerning leasing shall prevail over this general order. The staff concurred in this request.

Representatives of companies whose principal business is the leasing of motor vehicles without drivers and which are affiliated with highway carriers testified in favor of the CTA proposal to exempt such leasing companies from any general order concerning leasing. They wish to be certain that the Commission will not apply its "alter ego" doctrine to their operations. These companies compete with such organizations as Hertz, Avis, the Ryder System, and California Truck Rentals, all companies which lease trucks without drivers, which are not regulated, and would not be regulated under the proposed regulations. In their opinion, to make carrier affiliated leasing companies subject to leasing regulations more onerous than those applied to nonaffiliated companies, such as the thirty-day requirement, would put the affiliated leasing companies at a competitive disadvantage. The witnesses knew of no abuses in the industry which would warrant any remedial action at this time. The staff concurred in this exemption.

The president of the Mobile Housing Carriers' Conference, Inc., testified on behalf of the Conference and numerous carriers engaged in the transportation of trailer coaches, travel trailers, and allied commodities between all points and places in the United States. These carriers operate pursuant to certificates granted by the ICC, and when operating in California pursuant to permits issued by this Commission. Virtually 100 percent of the power equipment operated in this business is provided by owner-operators under long-term lease arrangements with compensation based on a fixed mileage rate for each loaded mile. The owner-operator does not have any operating authority from the ICC as the ICC considers him an independent contractor; nor does the owner-operator have any operating authority from this Commission.

The witness stated that because of the long standing historical relationship between the trailer coach carriers and the owner-operators, it is not feasible, from the standpoint of either the carriers or the owner-operators, to require the owner-operators to be placed on the payrolls of the carriers. This would represent a distinct disadvantage to both the carriers and the owner-operators. To date this Commission has permitted the carriers to operate their equipment under an owner-operator arrangement without requiring any of the carriers to establish an employer-employee relationship, or in the alternative, requiring the owner-operators to obtain subhaul permits from this Commission. If this lease arrangement were to be changed for California

intrastate commerce the owner-operators would be required to obtain permits at a substantial cost to them from which, in the opinion of the witness, no regulatory benefit would flow. As a practical matter this effect would eliminate virtually all non-California-based owner-operators from the transportation of California intrastate traffic. Increases in carrier costs ultimately would result in increased rates which necessarily will drive a portion of this traffic away from for-hire service to proprietary service, to the public disadvantage.

In the witness's opinion his industry operates more efficiently and at lower rates to the shipping public by the use of owner-operators who are driving and maintaining their own equipment. During a period when the mobile home carriers owned their own equipment their operating ratio was over 100 percent, but with the use of owner-operators their operating ratio has been under 100 percent. When operating over irregular routes and between various points and places where the carrier cannot control the maintenance of equipment the carrier cannot periodically conduct a preventive maintenance program. Therefore, if the carrier owned the equipment cost factors would be very high. When the driver owns the equipment he will be more able to keep his maintenance costs at a minimum. The owner-operator has an incentive to operate his equipment efficiently at the lowest possible cost.

The witness stated that the same equipment leasing practices are followed in California with respect to the operation of equipment utilized in providing California intrastate service as are practiced in interstate service under the ICC regulations. In the witness's opinion the responsibility of these carriers under the ICC rules is sufficient to protect the California intrastate shipping public. The witness supported the CTA proposal and requested a finding that an employer-employee relationship will not be required to provide service through the utilization of leased equipment operated by the lessors in connection with the transportation of trailer coaches, travel trailers, and allied commodities.

A representative of Mobil Oil Corporation testified that his company needs specialized tank trucks to transport its product. Mobil owns its own fleet of tank trucks but on occasion these trucks break down and it often takes from three to five days to repair the trucks. Mobil's drivers are paid on a straight salary basis and if replacement equipment is not available these men remain idle. To the witness's knowledge there are no truck leasing companies, whether affiliated with carriers or not, who can provide such specialized tank trucks. Such tank trucks are only available from carriers authorized to haul petroleum products. The witness objects to that portion of the proposed order which require a thirty-day minimum rental time period on equipment leased by carriers to shippers. If this provision becomes law it will mean that Mobil will either have to forego renting supplemental equipment when one of its trucks breaks down or will have a truck sitting idle for about twenty-five days.

A representative of the Union Terminal Warehouse (UTW) testified that his company opposes the staff provision which prohibits percentage of revenue compensation to be paid in leases that come under the carrier-carrier part of the proposed general order. The carrier division of UTW has long standing percentage of revenue equipment leases with four owners of equipment. Three of these owners drive for UTW; the owners also supply additional drivers for the equipment. These leases, in general, provide that the owners receive 60 to 70 percent of the gross revenue earned by the equipment, depending upon the commodity transported, against which are offset drivers' wages. The drivers, including the owner-drivers, are on the same payroll roster as the drivers of company-furnished equipment. They receive the same standard wage scale and benefits as are paid under prevailing Teamster union agreements. UTW controls the operation of the leased equipment to the same extent that it controls its own equipment. UTW feels that these lease agreements are beneficial because it is not large enough to operate its own truck repair shop for the efficient upkeep of motor carrier equipment, so it is to its advantage to lease equipment under fully-maintained clauses in which the lessor undertakes all maintenance and repair. Also, it is in the interest of the lessor to maximize the volume of freight which he can efficiently handle in the course of a day. All of the owners of the leased vehicles have permits, as does UTW.

Representatives of certain carriers which have leasing company affiliates testified in opposition to the leasing regulations. The leasing affiliates of these carriers exist primarily to lease equipment to the carriers who are affiliated.<sup>6/</sup> On occasion these leasing companies lease equipment from outside parties and, in turn, lease this equipment to nonaffiliated entities. The witnesses feel that this arrangement would be jeopardized by the staff proposal. However, they were unable to point out which particular provisions of the staff proposal would be burdensome to their companies.

The attorney for the household goods carriers asked that his clients be exempt from any leasing general order. He presented no testimony in support of this request.

The California Manufacturers Association supported the CTA proposal.

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In this respect they differ from those leasing companies, whose testimony is set forth above, that primarily furnish equipment to nonaffiliated companies.

Discussion

I

In California the charges made by for-hire carriers to transport property in intrastate commerce over the highways are governed by common carrier tariffs and minimum rates, unless the property or the movement has been declared exempt from rate regulation. On occasion, both carrier and shipper attempt to evade the minimum rates or tariff charges by means of devices not authorized by the Commission. (See Sections 494 and 3668.) Such devices, which are limited only by the imagination, include the purported leasing of motor vehicles and trailers, with or without drivers. Over the years the Commission has built up a small body of case law dealing with this leasing problem. Most violations fall into two categories: 1) where a carrier who purports to lease his equipment to a shipper, or another carrier, enters into an agreement to drive the equipment, and the total cost to the shipper (or the other carrier) is less than would be charged had there been no lease and the "lessor" had carried the goods under the applicable filed or minimum rate tariff; and 2) where a carrier leases equipment to a shipper at a low rental, or leases equipment from a shipper at a high rental, thereby, in effect, rebating part of the transportation charges.



Although the use of leases has been abused, there are many situations where leasing equipment, with or without drivers, serves a salutary transportation purpose. Among other things, leasing permits carriers to provide service to the public without incurring large capital outlays, it facilitates the exchange of equipment to meet peak load periods and to replace temporarily out-of-service equipment, and it encourages the services of the small businessman owner-operator. To avoid the pitfalls of an improper lease (that is, one that would be considered a device to evade regulation) shippers, carriers, and their representatives have made inquiries of the Commission staff to determine the elements of a lease that would not be considered an evasion of regulation. Any general order concerning motor vehicle leases should set forth these elements.

The proposed general orders of the staff and the CTA deal with two distinct types of leasing: bare equipment leases and leases of power equipment with driver. The problem with the bare equipment lease is to make sure that the charges are not rebates; the problem with the lease of power equipment with driver is to determine whether such a lease is a subhaul agreement subject to regulation, or whether it validly removes the lessor from regulation.

The principal requirement of a lease of bare equipment is that the compensation be reasonable, in which case there is little likelihood of rebate or circumvention of regulation. The manner of computing compensation or the term of the lease is not decisive; it is the result that matters. Criteria for determining reasonableness of compensation are not susceptible of precise enumeration, any more than are the criteria for determining reasonableness of the conduct of the "reasonable man." What constitutes reasonableness can only be determined after a consideration of all of the factors bearing on a particular situation.

Leasing of equipment with a driver, a so-called "integrated lease," presents special problems. In this situation the difficulty is distinguishing between the true lease arrangement, on the one hand, and a prime carrier-shipper arrangement or a prime carrier-subhauler arrangement, on the other. The problem is not new. It was considered by this Commission in Re Payments Made to Underlying Carriers (1949) 48 CPUC 576, and in Re Practices by Motor Freight Carriers of Leasing of Vehicles & Subhauling (1952) 52 CPUC 32, as well as in other cases. The ICC has conducted similar inquiries. (See, Ex Parte MC-43 (1950) 51 MCC 461, (1951) 52 MCC 675, (1955) 64 MCC 361, (1956) 68 MCC 553, (1962) 89 MCC 683.)

In Re Payments Made to Underlying Carriers, supra, the Commission first discussed the problem from the point of view of the lessee-carrier. We said:

It is axiomatic that a for-hire carrier, operating within the State of California, must conduct its operations in conformity with (the Public Utilities Code). In the conduct of these operations the carrier may operate equipment it owns or equipment it leases; however, in either case, the carrier must have control over the equipment so operated, otherwise the operations are, in fact, not those of the carrier.

The word "control" as used herein, implies that the carrier must have possession of the equipment and must have the authority to supervise its operation. Also, the carrier must assume the responsibility for the equipment so operated, both as it concerns the relations with the public and the relations with the shippers and consignees involved. Likewise, the carrier must have control over the drivers and other persons responsible for the operation of this equipment. This control must be such that the drivers stand in the legal relation to the carrier of master and servant or employer and employee. (48 CPUC at 581.)

Then the Commission discussed the subject from the point of view of the lessor. We said:

As herein considered, a subhauler means any corporation, company, individual, firm, or copartnership which, under a subhauling arrangement with a principal carrier, supplies both the equipment and the drivers. If this subhauling arrangement meets the foregoing tests as to control of the operation by the principal carrier, and as to the master and servant relationship, then the subhauler is, in fact, operating under a principal carrier's authority. Under such conditions the subhauler needs no authority of his own since his operations are deemed to be the operations of the principal. If, however, the so-called subhauling arrangements are not under the control of the principal carrier, as set out by the foregoing tests, then we do not consider the operations to be those of a principal carrier but rather they become the operations of the subhauler. Under such conditions the subhauler himself becomes a carrier and must secure the necessary authority to so operate as prescribed by the aforementioned statutes. (48 CPUC at 582.)

The principles enunciated in this case are still good.

Most ICC rules on leasing<sup>7/</sup> are not particularly helpful in determining useful rules for California because the problems the ICC was confronted with, protecting certificated carriers in a limited entry field, preventing trip-leasing as a device by which certificated carriers exceed the scope of their authority, and enforcing stringent safety regulations, are not present, to any material degree, in California. However, ICC regulations should be considered in order to minimize any possible conflict between state and federal regulation, as many carriers handle both intrastate and interstate freight.

The evidence presented in this case showed no abuses or improper practices in any segment of the trucking industry, or between carriers and shippers, that would warrant the imposition of regulations materially different than those set forth in court and Commission cases and the statutes. The evidence does show that there is a need in the motor carrier field for an order setting forth the components of a lease that will not be considered an evasion of regulation.

The arguments of those opposing the issuance of any form of general order are not persuasive. To the extent that these parties fear that a blanket order will change long standing practices in the industry their concern is understandable but our order will not effect such a change to any material degree. Material changes in current practices should be made only after actual abuses are shown and then most probably by amendment of the individual tariffs that control the various segments of the industry.

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<sup>7/</sup> 49 CFR Part 1057.

There are a number of persuasive reasons which support the issuance of a general order. Of primary importance is the number of inquiries made to the staff concerning proper leasing practices. Shippers and carriers quite rightly wish to conform to law, as their numerous questions prove, and the staff wishes to give accurate answers. But, with the framework for guidance presently limited to a meager statute and a sparse collection of legal cases, advice on the subject must necessarily be couched in the vaguest of terms. A general order will tend to make the statute and case law more cohesive. In the same manner, a general order will permit practitioners to advise clients on the basis of Commission orders, rather than on the opinion of a staff member.<sup>8/</sup> The fact that the leasing statute authorizes the Commission to issue rules on this subject is evidence that the legislature anticipated that some fleshing out of the statute would be necessary.

## II

The two major proposals for a general order were those of the staff and the CTA. The proposals are similar in format and, to a large degree, in content, but there are major differences concerning methods of compensation, term of lease, and employer-employee relationship between lessor and lessee which must be

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Reliance on the advice of staff members concerning the validity of a lease is no defense to a charge of using a lease as a device to avoid minimum rate regulation. (Re J.A. Stafford Trucking (1966) 65 CPUC 482, 494.)

settled. Each format has separate parts covering the different relationships in the industry. The staff proposal has three: leasing between carriers, leasing by carriers to shippers, and leasing to carriers from shippers; the CTA proposal has two: leasing between carriers, and leasing by carriers to shippers.

1. Leasing Between Carriers

a. The staff proposes that each lease shall provide:

Where a tariff, either a minimum rate tariff or common carrier tariff, prescribes amounts to be paid subhaulers and does not prescribe a stated rental for the lease of motor vehicles, then any such lease shall specify the compensation to be paid by the lessee for the rental of the motor vehicle, which compensation shall be stated in a definite dollar amount and shall not be based upon a division or percentage of any tariff rate or rates or contingent upon the actual usage of the motor vehicle except that the lease may include a provision for the payment of an additional consideration based upon an excess of miles beyond a fixed amount during the term of the lease, provided such fixed amount of miles is representative of normal use and such compensation shall be a reasonable rental for the motor vehicle leased.

The CTA proposes that each lease: Shall specify the compensation to be paid by the lessee for the rental of the motor vehicle.

The staff proposal apparently does not require that compensation or rental be specified in the lease except when a tariff prescribes amounts to be paid subhaulers and does not prescribe a stated rental for the lease of motor vehicles. In instances where compensation must be specified such compensation

cannot be based upon a division of revenues, percentage of rates, or actual usage. Presumably, in instances where compensation need not be specified any method of compensation would be legal. This prohibition of division of revenue, percentage of rates, or actual usage as a measure of compensation has not been shown to achieve any regulatory objective. Moreover, the staff proposal presents a trap for the unwary. The proposal is a trap because often there will be no way of determining which tariff applies in a given situation. For example, if carrier A leases a truck from carrier B, the truck can be used to transport a great variety of commodities, some of which may move under a tariff which prescribes amounts to be paid subhaulers and does not prescribe a stated rental for the lease of motor vehicles. If carrier A first uses the leased truck to transport commodities not covered by a tariff so prescribing, carrier A does not come within the prohibition. If, during the course of the lease, carrier A begins to transport commodities covered by a prescribing tariff a question arises as to whether the lease has been transformed from lawful to unlawful. Further, compliance will require an astute knowledge of each minimum rate tariff and all common carrier tariffs. But the overriding consideration is that no need has been shown for the provision. No abuses, either actual or hypothetical, were described which this provision will correct. A prohibition of compensation based on division of revenues was enacted in the original ICC leasing regulations (Ex Parte MC-43 (1951) 52 MCC, 675, 745) but since then has been eliminated (49 CFR 1057.4(a)(5)). And this Commission, in its minimum rate tariffs, has indicated that compensation based

on a division of revenues is not necessarily unacceptable. (See MRT 7 Item 94, MRT 10 Item 163.) We cannot adopt the staff's marked change in traditional methods of payment without some evidence of need. The CTA proposal on compensation is reasonable.

- b. The staff proposes that "a bona fide employer-employee relationship shall exist between the lessee and the driver or drivers of any leased motor vehicle."

The CTA proposal does not have this limitation.

The staff proposal is sound. It clearly shows that one of the two elements in the distinction between a subhauler and a bona fide lessor of power equipment who also drives the leased vehicle is that the latter must be an employee of the lessee. The other element is that the lessee must have exclusive possession, use, supervision, direction, control, and assumption of responsibility of the motor vehicle for the duration of the lease. The rule in this part of the general order must be distinguished from the rule in the carrier-shipper part. In that part the lessor cannot qualify as an employee of the lessee. (Section 3548.) A carrier that normally operates as a subhauler can avoid regulation by conforming to the provisions of the carrier-carrier part of the order, i.e., he can lease his equipment to a carrier, go on the carrier's payroll, and drive his equipment; by direct statutory prohibition, he cannot do this if the lessee of the equipment is a shipper.



2. Leasing by Carriers to Shippers

This part is largely a restatement of Section 3548 and needs little comment except on the issue of the term of the lease. Both the staff and the CTA support a lease term of not less than thirty days. The reasons given are that thirty days is long enough to indicate a substantial transaction as opposed to a possible evasion of regulation, and the provision will prevent trip leasing. The thirty-day minimum period was vigorously opposed by shippers who require equipment for periods less than thirty days to replace proprietary equipment temporarily out of service. The statute is silent on this issue.

The principal problem sought to be met by this part is the one created when a carrier leases a motor vehicle to a shipper and the lessor or an employee of the lessor is employed by the shipper to operate the vehicle. Essentially, this service is for-hire carriage. (See, United States v Drum (1962) 368 US 370, 7 L ed 2d 360; Re Fitzgerald Trucking (1963) 61 CPUC 571, and Re Webster E. Tennis (1964) 63 CPUC 665.) In these three cases the lease agreements were for at least thirty days, yet violations were still found. The solution to the problem of substituting lease and employment agreements in place of for-hire transportation agreements lies not in imposing a thirty-day minimum term, but in preventing the lessor or his employee from operating the motor vehicle. Such a prohibition is included in section 3548 and, therefore, will be in the general order. Abuses in carrier-shipper leasing, to the extent that they exist in California, will be corrected by

prohibiting the lessor or his employee from operating the vehicle. The thirty-day provision is superfluous in this situation. Concededly, the thirty-day limitation gives an indication of permanence, but permanence in this context has not been shown to eliminate improper practices. In fact, the only evidence in this record concerning the effect of the thirty-day provision shows that the limitation will prohibit a shipper from replacing proprietary equipment temporarily out of service, a situation not shown to be improper. Abuses arising from the lease of bare equipment to shippers from carriers can be minimized by requiring the compensation to be reasonable and placing the burden of proof of reasonableness on the proponent of the lease.<sup>9/</sup>

3. Leasing to Carriers from Shippers

This part is designed to prevent rebates or evasions of minimum rates in the situation where a shipper leases equipment to a carrier at an unreasonably high rental. In such a situation the principal element is the reasonableness of the compensation. The thirty-day provision of the staff proposal has no bearing on this element; in fact, the longer the lease period the more will be rebated - and the question of reasonableness remains. Also, the staff-proposed prohibition against setting the rental on the basis of a division or percentage of the tariff rate, or actual usage, appears to serve no useful purpose. It will merely make legitimate leases more difficult to undertake; those persons attempting to

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The ICC regulations prohibit all leases of equipment without drivers by common carriers to shippers. (49 CFR 1057.6(b).)

use a lease arrangement to evade minimum rates will have no trouble accurately estimating compensation which is equivalent to a percentage of revenue or actual usage.

The CTA and others assert that the Commission has no authority to promulgate rules concerning leases from shippers to carriers. This assertion is without merit. Assuming that Sections 3547-3550 do not provide such authority, other sections do. In addition to the general provisions of Section 701, "the Commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction," Section 1062 authorizes the Commission to:

- (a) Supervise and regulate every highway common carrier, cement carrier and petroleum irregular route carrier in this State.
- (b) Fix the rates, fares, charges, classifications, and rules of each such carrier.
- (c) Regulate the accounts and service of each such carrier, and require the filing of annual and other reports and of other data by such carriers.
- (d) Supervise and regulate such carriers in all other matters affecting the relationship between them and the shipping public.

The commission, by general order or otherwise, may prescribe rules applicable to any and all highway common carriers, cement carriers and petroleum irregular route carriers....

and Section 3665 authorizes the Commission to "make such rules as are necessary to the application and enforcement of the rates established or approved pursuant to this chapter" (the minimum rate

tariffs). See also Sections 453, 458, and 5194. We are regulating carriers, not shippers. And we are saying that carriers may not lease motor vehicles from shippers except at reasonable rates.<sup>10/</sup>

### III

The General Order that will be promulgated is set forth in Appendix C. Major provisions, such as method of compensation, employer-employee relationship, and term of lease, have been discussed above. Some suggested provisions which are not included in the General Order should also be briefly discussed. The formal "comments" suggested by the staff are not included because they tend to limit the Commission's inquiry in an area where there is no limit to the variety of schemes which attempt to evade regulation. To the extent that these comments reflect past decisions of courts and Commission careful practitioners can go to the source. Any new matter in the comments can only restrict the Commission's field of inquiry. The Commission has refrained from defining "devices" except in case by case adjudications.

(Re Premier Transport Co. (1964) 63 CPUC 748, 753; compare Section 3550.) However, the staff, when responding to questions from the industry and the public about provisions in a lease, such as the reasonableness of the compensation (or method of compensation) or the bona fides of an employer-employee relationship, is not precluded from referring to the various fact situations and holdings of court and Commission decisions, including this one.

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<sup>10/</sup> The code sections cited in this paragraph also provide the basis for Commission regulation of the leasing of nonself-propelled vehicles.

The General Order definition of a motor vehicle is essentially that set forth in Section 3510<sup>11/</sup> except that the phrase "or other vehicle drawn thereby" is omitted. This omission makes clear that the General Order is applicable to leases of bare equipment whether attached to power units or not.

Other matters not incorporated from the staff's proposed general order include tautologies, e.g., the provision "the lessee shall be responsible for maintaining accident and liability insurance required by law" is no different from the provision that the lessee must have "complete assumption of responsibility" (see General Order, Part I, B(2)); and legal truisms, e.g., "the actual performance under a lease, rather than the terms of the lease, shall be deemed to be conclusive evidence of the character of the operations."

#### IV

Throughout the hearings there were references to the owner-operator who leases his equipment to a carrier and goes on the carrier's payroll as an employee. One of the primary purposes of the General Order has been to compile the criteria which determine whether such a person has effectively removed himself from Commission regulation. These criteria are set forth in Part I of the General Order. Those who do not comply with Part I are subhaulers.

In the usual case, prior to entering into a lease with another carrier and becoming an employee of that carrier, the

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<sup>11/</sup> Section 3510: "'Motor vehicle' means every motor truck, tractor, or other self-propelled vehicle used for transportation of property over the public highways, than upon fixed rails or tracks, and any trailer, semi-trailer, dolly, or other vehicle drawn thereby."

owner-operator is a carrier as defined in the Public Utilities Code. Any lease that he enters into with another carrier would be considered a carrier-carrier lease even though the effect of the lease, if it conforms to the provisions of Part I, would be to remove the owner-operator, to that extent, from Commission regulation. Failure to comply with Part I would mean that the lessor carrier had not brought about an exemption of his activities from regulation, and this failure might give rise to violations of minimum rate tariffs and licensing statutes.

The discussion, at the hearings, of carrier-carrier leases included the example of a driver who buys a truck and immediately leases the truck to a carrier and is employed by the carrier to drive the truck. But it was never clearly explained how such a driver would fit into the carrier-carrier relationship subject to Part I, since he was not a carrier prior to the lease arrangement. Under the law as presently interpreted by the courts and this Commission, for such an owner-operator to be exempt from Commission jurisdiction he would have to comply with criteria substantially similar to that set forth in Part I.<sup>12/</sup> It is our intention that the criteria set forth in Part I of the General Order are to be used to determine whether such owner-operator has successfully avoided Commission jurisdiction. If such owner-operator complies with the Part I criteria he is not under our jurisdiction; if he does not comply, he is.

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<sup>12/</sup> One dissimilarity would be the requirement that the lease be in writing.

We cannot anticipate and answer all of the questions that might arise when an owner-operator attempts to avoid regulation by leasing his truck to a carrier and is employed by the carrier to drive the truck. However, often the lease provides for the lessor to maintain the truck. One question that can be anticipated concerns the meaning of "...exclusive possession, use, supervision, direction, and control of the motor vehicle, and for the complete assumption of responsibility in respect thereto by the lessee..." (General Order, Part I B(2)), in reference to maintenance by the lessor. In such a situation, where the owner-operator must maintain the motor vehicle, the motor vehicle is not under the complete control and responsibility of the lessee, and, therefore, the owner-operator is subject to regulation.

(Re Webster H. Tennis (1964) 63 CPUC 665.)

In order to conform to general industry practice and the practices of independent truck leasing companies, maintenance of a motor vehicle when leased without driver, should be permitted to be the obligation of the lessor, if the parties to the lease so desire. It is only when a self-propelled motor vehicle is leased with a driver, and the lessor wishes to avoid the burdens of regulation, that maintenance must be the obligation of the lessee. This insures that the operation of the vehicle is in fact that of the lessee carrier. That is, certain characteristic burdens of the transportation business, such as repair and maintenance, are to be borne by the person providing the transportation service, and not shifted to the owner-operator. (United States v. Drum (1962) 368 US 370, 379, 7 L ed 2d 360, 367.) The General Order will make this distinction. (See, General Order, Part I B(2), Part II C(2), and Part III B (2).)

V

The opinion up to this point is essentially a copy of the proposed report modified by eliminating those parts that referred to sections of the proposed General Order in accordance with those exceptions to the proposed report to which the Commission acquiesces.

Exceptions to the proposed report were filed by the CTA, Union Carbide Corporation, Pacific Motor Trucking Company joined by two others, Jet Delivery Service joined by two others, Mike Conrotto Trucking joined by eleven others, Morgan Drive Away, Inc., joined by two others, Valley Parcel Service joined by nine others, Northern California Ready Mixed Concrete and Materials Association joined by two others, and California Moving and Storage Association.

The principal exception mentioned by almost all parties was to the provision that every lease between carriers "shall provide for the exclusive possession, use, supervision, direction, and control of the motor vehicle, and for the complete assumption of responsibility in respect thereto, by the lessee for the duration of the lease; except that if the lessor or an employee of the lessor does not operate the leased motor vehicle then the lease may provide that maintenance of the motor vehicle shall be the lessors obligation." It was to the underlined portion of the quoted provision that the exceptions were directed. For reasons to be discussed more fully below we will not delete the underlined portion of the quoted provision.



Some exceptions to the proposed report were no more than requests for special treatment and should have no part of a general order. In those instances where special treatment is required for a particular segment of the transportation industry proper application for exemptions from regulation may be made to the Commission. Examples of this kind of exception include Union Carbide's exception to Part II C (6); California Moving and Storage Association's request to be exempt from the General Order; and Northern California Ready Mixed Cement's request to be exempt from the General Order.

Exceptions that will be acceded to are that a copy of the lease shall be filed with the Commission within five days after execution, and any amendment or modification shall be in writing and a copy thereof filed with the Commission within five days after execution; and that the word "noncarrier" shall be used in place of the word shipper. Noncarrier meaning "every person, firm or corporation engaged in any business enterprise except for-hire transportation of property."

All other exceptions not specifically mentioned will not be incorporated into the General Order.

Replies to exceptions were filed by the CTA, the Highway Carrier's Association, the California Dump Truck Owners Association, and the Commission staff. All except the CTA supported the proposed report. (The CTA supports the proposed report if modified by its exceptions.) The reply of the CTA was directed only to the proposition that there is a need for leasing regulations.

We turn now to the maintenance provision. The CTA bases its argument that there is no need in the General Order for the phrase "except that if the lessor or an employee of the lessor does not operate the leased motor vehicle then the lease may provide that maintenance of the motor vehicle shall be the lessor's obligation", on the grounds that the exception arose from a misreading by the Examiner of United States v. Drum (1962) 368 US 370, 7 L Ed 2d 360, and Re Webster H. Tennis (1964) 63 CPUC 665 and that "there is no reason, legal, practical, or theoretical precluding an owner-operator from leasing his equipment to a carrier and furnishing the maintenance of the equipment. Maintenance is not to be considered in a different category than depreciation, insurance, and licenses. The provision of maintenance by the lessor does not preclude the assumption of control and responsibilities of a for-hire carrier by the carrier-lessee. There is no need, in these regulations, to inject any such dubious distinctions as recommended in the proposed report. The status of the owner-operator, with all its possible complications, is not the subject of these regulations. The Commission is here concerned with leases from a regulated carrier to another such carrier. The owner-operator problem is not in issue here. If it were, the Commission would need much information not contained in the record, including the provisions of collective bargaining agreements and knowledge of along-standing practices in the industry. Suffice it to say, the problem is not before the Commission in this proceeding."

It is difficult to understand how the CTA can say that the status of the owner-operator is not the subject of these regulations or before the Commission in this proceeding. The one item that took more time and more discussion than any other item in this proceeding concerned the status of the owner-operator. All of Part IV of this opinion (and of the proposed report) is devoted specifically to this problem as is the discussion on sheets 17 and 18 of this opinion (and of the proposed report).

In United States v. Drum, supra, the Court was concerned with an order of the Interstate Commerce Commission which held that persons who leased their motor vehicles and hired their services as drivers to a shipper were subject to the permit requirements of the ICC. In Drum, the shipper hired the tractors and the driver-owners on a mileage basis, without any guarantee of minimum mileage, and had the sole right to control the use of the tractors through the drivers. The shipper claimed to be a private carrier. The shipper paid for public liability and property damage insurance, conducted safety inspections, closely directed all details of loading and delivery routes, instructed drivers regarding steps to be taken in emergencies, administered examinations, supervised the preparation of reports required by the ICC, paid social security taxes, withheld income taxes, and provided workmen's compensation. The drivers were covered by a collective bargaining agreement which gave them seniority rights, death benefits, immunity from discharge except for cause, military service protection, and vacation pay. For the drivers' part they, as owners of the

tractors, bore operating and maintenance costs and the risk of depreciation and damage. Under this factual situation, the Supreme Court held that the ICC did not commit error in finding the driver-owners to be contract carriers subject to the permit requirements of the Interstate Commerce Act. The Court reasoned that the shipper was not a private carrier because it effectively passed to the owner-operators "certain characteristic burdens of the transportation business," among which were maintenance and repairs.

In our opinion the essential premise of Drum -- passing to the owner-operators certain characteristic burdens of the transportation business -- remains the same whether we are discussing a carrier-shipper arrangement or a carrier-carrier arrangement. Under the California regulatory scheme subhaulers are carriers and are required to be licensed by this Commission. In Drum, owner-operators who assumed certain characteristic burdens of the transportation business were held to be carriers; we hold the same way. It is immaterial whether these owner-operators deal with other carriers or with noncarriers; if they assume certain characteristic burdens of the transportation business when their motor vehicle is under lease they are required to be licensed by this Commission and conform to applicable tariffs. And one of those characteristics is the maintenance cost of the motor vehicle. By including a provision prohibiting lessor maintenance in certain circumstances we are not making new law, we are merely codifying what we consider to be the principal factor in Drum which caused the owner-operators to be subject to ICC licensing requirements; a provision that we have already enforced in a leasing situation. (See Decision No. 76737, Investigation of J&H Transportation; and Decision No. 76621, Investigation of Federal Cement.)

Findings of Fact

1. Between 1953 and 1962 the Commission staff reviewed over 2,000 leasing arrangements; approximately 75 percent between carriers and 25 percent between a carrier and a shipper. This review continues unabated. Staff members and the public require standards to aid in distinguishing between a bona fide lease arrangement and a transportation contract such as a subhaul agreement. Also, minimum uniform standards for lease agreements will lessen the use of leasing as a device to evade regulation.

2. The cost incurred in complying with the General Order governing leasing will be negligible and service to the public will not be adversely affected.

3. Regulations more detailed than those in the General Order should be dealt with in the minimum rate tariff applicable to that segment of the trucking industry which has special problems relating to motor vehicle leasing.

4. No abuses or improper practices have been shown in any segment of the trucking industry, or between carriers and shippers, that warrant the imposition of regulations materially different from those set forth in court and Commission cases and the statutes. There is a need in the motor carrier field for a general order setting forth the components of a lease that will not be considered an evasion of regulation.

5. The staff proposal which would prohibit the compensation in leases to be based on a division of revenues, percentage of rates, or actual usage has not been shown to achieve any regulatory objective; and it is a trap for the unwary. The CTA proposal on

compensation restrictions in carrier-shipper leases was similar to the staff's. The CTA proposal regarding carrier-carrier leases was merely that the compensation be specified. No need has been shown for a compensation provision in any lease to provide more than that the compensation be specified and be reasonable.

6. The staff proposal that in leases between carriers there shall be a bona fide employer-employee relationship between the lessee and the driver of the leased vehicle is reasonable.

7. The proposal that leases shall be for a minimum period of thirty days is unreasonable. Such a provision will not affectuate any regulatory objective but will prohibit a shipper or carrier from replacing equipment temporarily out of service, or from obtaining equipment to meet peak demands.

8. An owner-operator of a self-propelled vehicle who is not a carrier but who wishes to drive his vehicle as the employee of a carrier, may avoid regulation by leasing his self-propelled vehicle to a carrier if the lease: 1) provides for the exclusive possession, use, supervision, direction, and control of the motor vehicle, and for the complete assumption of responsibility in respect thereto, by the lessee for the duration of the lease, 2) identifies the motor vehicle, 3) specifies the term of the lease, and 4) specifies the compensation to be paid by the lessee for the rental of the vehicle, and if a bona fide employer-employee relationship exists between the lessee and the driver or drivers of the leased vehicle.

9. When an owner-operator leases his self-propelled vehicle to a carrier and he or his employee is employed by the lessee to drive the vehicle, if the lease provides for maintenance of the vehicle to be the obligation of the lessor, then the vehicle is not under the complete control of the lessee, and, therefore, the owner-operator is subject to regulation.

10. The General Order set forth in Appendix C is reasonable as it meets the current needs of the trucking industry.

The Commission concludes that the General Order set forth in Appendix C should be adopted.

O R D E R

IT IS ORDERED that:

1. General Order No. 130, which is attached hereto in Appendix C, and by this reference made a part hereof, is hereby adopted to become effective September 1, 1970.

2. The Secretary of the Commission shall serve a copy of this order upon each highway carrier described in Section 3511 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 14th day of APRIL, 1970.

William J. Spence, Jr.  
President

James L. Sturgeon  
Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

PROPOSED GENERAL ORDER

RULES AND REGULATIONS TO GOVERN THE  
LEASING OF MOTOR VEHICLES

PART 1

REGULATION OF LEASING BETWEEN CARRIERS

General Definitions

A. "Lease" means any contract, or agreement, or arrangement, other than a conditional sales contract, a chattel mortgage, or a statutory lien, whereby any person, firm, or corporation who or which owns, controls, or is entitled to possession or control of any motor vehicle, transfer to any other person, firm, or corporation the right to possession and control of such motor vehicle.

Comment: The Commission intends that this definition does not apply to contractual arrangements between prime or overlying carriers and sub-haulers, or underlying carriers, except this definition and this general order do apply in situations where the prime or overlying carriers as lessors lease the trailer equipment to subhaulers or underlying carriers.

B. "Carrier" means every carrier as described in Public Utilities Code Sections 3511 and 3911.

Comment: The Commission intends this definition to include all carriers transporting property over the public highways regulated by the Public Utilities Code.

C. "Motor vehicle" means every motor truck, truck tractor, other self-propelled vehicle, trailer, semi-trailer, mobile container or dolly used for transportation of property over the public highways.

Comment: "Mobile container" means a box, platform or container, which is attached to a chassis with wheels to form a trailer or semi-trailer for movement over the public highways.



D. "Lessor" means any person, firm, or corporation who or which owns or controls, or has the right to possession or control of, a motor vehicle and who or which leases the same to any lessee.

E. "Lessee" means any person, firm, or corporation who or which leases any motor vehicle from a lessor.

#### RULES

- A. No carrier shall enter into or make any lease of any motor vehicle to any other carrier except in accordance with the provisions of this part.
- B. Every operation under such lease shall conform to the provisions of such lease. The lease shall be in accordance with the requirements set forth in C. below.
- C. Every lease between carriers shall conform to the following requirements:
  - 1. Shall be in writing, contain all of the terms and conditions of the agreement, and be executed and signed by the parties thereto, or their regular employees or agents;
  - 2. Shall provide for the exclusive possession, use, supervision, direction, and control of the motor vehicle, and for the complete assumption of responsibility in respect thereto, by the lessee for the duration of the lease;
  - 3. Shall specifically identify the leased motor vehicle or vehicles;
  - 4. Shall specify the term of the lease;

5. Where a tariff, either a minimum rate tariff or common carrier tariff, prescribes amounts to be paid subhaulers and does not prescribe a stated rental for the lease of motor vehicles, then any such lease shall specify the compensation to be paid by the lessee for the rental of the motor vehicle, which compensation shall be stated in a definite dollar amount and shall not be based upon a division or percentage of any tariff rate or rates or contingent upon the actual usage of the motor vehicle; except that the lease may include a provision for the payment of an additional consideration based upon an excess of miles beyond a fixed amount during the term of the lease, provided such fixed amount of miles is representative of normal use and such compensation shall be a reasonable rental for the motor vehicle leased.
- D. The actual performance under a lease, rather than the terms of the lease, shall be deemed to be conclusive evidence of the character of the operations;
- E. A bona fide employer-employee relationship shall exist between the lessee and the driver or drivers of any leased motor vehicle;
- F. In determining whether a bona fide employer-employee relationship exists between the lessee and the lessor or driver or drivers of lessor who drive the leased motor vehicle as required by E. above, the proponent of the lease shall have the burden of proving that the relationship is a bona fide employer-employee relationship, in any proceeding where the validity of the lease is at issue and the lessor has provided a driver.

Comment: The Commission will consider the following factors to be among those material in determining whether an employer-employee relationship exists:

1. The manner and amount of compensation paid to the employee, whether characterized as wages or not;
2. Whether the employee's name has been entered upon the payroll of the employer;
3. Whether social security taxes, unemployment compensation premiums, income tax withholding and disability payments or other payments, have been paid by the employer to the employee's account, if the employer would be required by law to do so for a non-lessor employee;
4. Whether any such payments initially made by the employer as lease rentals have been charged back to the employee in such manner that any such payments are ultimately borne by him;
5. Whether the employer was responsible for the maintenance of, and the cost of gasoline and oil used in, the leased motor vehicle;
6. The duration of the agreement between the parties;
7. Whether the employee drives only the motor vehicle leased by the lessor to the employer;
8. Whether other employees of the employer drive the motor vehicle leased by the employee to the employer;
9. Whether the employee was required to be available for work at all times and cannot refuse driving assignments;
10. Whether the employer had the right to reprimand this employee in the same manner as all other employees without regard to the employee's ownership interest in the motor vehicle;
11. Whether this employee was covered by the employer's master insurance policy;
12. Whether this employee had to keep in constant touch with the employer's nearest terminal after a shipment is completed so as to be available for a return load, and whether, if there is no return order, work may or may not be solicited by this employee.

- G. In any proceeding to determine whether or not an agreement constitutes a valid lease under this part, the reasonableness of the compensation paid for the rental of the motor vehicle as required by C. above shall be considered among the material factors in determining whether or not an agreement constitutes a valid lease or a subhaul arrangement. The burden of proof shall be upon the respondent or proponent of the lease in any such proceeding to prove that the compensation stated in the lease was reasonable.

Comment: The Commission will consider as probative the original and depreciated cost of the equipment leased and the availability of and the rental charge for similar motor vehicles from independent leasing companies.

- H. The lessee shall be responsible for maintaining accident and liability insurance required by law;
- I. A carrier leasing a motor vehicle pursuant to the provisions of this part shall maintain and keep available for Commission staff inspection all records pertaining to each leased motor vehicle for a period of not less than three years.

#### Scope

- A. This general order establishes minimum leasing regulations only and in case of conflict between this part and the provisions of a minimum rate tariff of this Commission, the minimum rate tariff shall prevail.

- B. The provisions of this part shall not apply to:
1. The leasing of motor vehicles without drivers from any person, firm, or corporation whose principal business is the leasing of motor vehicles without drivers.
  2. The interchange of equipment between carriers for the purpose of facilitating through movements of lading;
  3. The employment of drivers without motor vehicles from any person, firm, or corporation whose principal business is the provision of temporary employees.

DEVIATIONS

Upon prior application and a showing of good cause, the Commission may, with or without a hearing, authorize deviations from any or all of the provisions of this part.

PART II

RULES FOR REGULATION OF LEASING BY CARRIER TO NON-CARRIERS

General Definitions

A. "Lease" means any contract, or agreement, or arrangement, other than a conditional sales contract, a chattel mortgage, or a statutory lien, whereby any person, firm, or corporation who or which owns, controls, or is entitled to possession or control of any motor vehicle, transfers to any other person, firm, or corporation the right to possession and control of such motor vehicle.

B. "Carrier" means every carrier as described in Public Utilities Code Sections 3511 and 3911.

Comment: The Commission intends this definition to include all carriers transporting property over the public highways regulated by the Public Utilities Code.

C. "Motor vehicle" means every motor truck, truck tractor, other self-propelled vehicle, trailer, semi-trailer, mobile container or dolly used for transportation of property over the public highways.

Comment: "Mobile container" means a box, platform or container, which is attached to a chassis with wheels to form a trailer or semi-trailer for movement over the public highways.

D. "Lessor" means any person, firm, or corporation who or which owns or controls, or has the right to possession or control of, a motor vehicle and who or which leases the same to any lessee.

E. "Lessee" means any person, firm, or corporation who or which leases any motor vehicle from a lessor.

F. "Non-carrier" means every person, firm, or corporation engaged in any business enterprise except the business of being a carrier as defined above.

Rules

- A. No carrier shall enter into or make any lease of any motor vehicle to any non-carrier except in accordance with the provisions of this part.
- B. Every operation under such lease shall conform to the provisions of such lease. The lease shall be in accordance with the requirements set forth in C. below.
- C. Every lease from carrier to non-carrier shall conform to the following requirements:
  - 1. Shall be in writing, contain all of the terms and conditions of the agreement, and be executed and signed by the parties thereto, or their regular employees or agents, prior to the beginning of the lease term; and a copy thereof shall be filed with the Commission within five (5) days after execution. Any amendment or modification shall be in writing and a copy thereof filed with the Commission within five (5) days after execution;
  - 2. Shall provide for the exclusive possession, use, supervision, direction, and control of the motor vehicle, and for the complete assumption of responsibility in respect thereto, by the lessee for the duration of the lease;
  - 3. Shall specifically identify the leased motor vehicle or vehicles;
  - 4. Shall specify the term of the lease, which shall be not less than thirty (30) consecutive days;
  - 5. Shall specify the compensation to be paid by the lessee for the rental of the motor vehicle, which compensation shall be stated in a definite dollar amount and shall

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Appendix A

not be based upon a division or percentage of any tariff rate or rates or contingent upon the actual usage of the motor vehicle, except that the lease may include a provision for the payment of an additional consideration based upon an excess of miles beyond a fixed amount during the term of the lease, provided such fixed amount of miles is representative of normal use; and said compensation shall be a reasonable rental for the motor vehicles leased.

- D. The actual performance under a lease, rather than the terms of the lease, shall be deemed to be conclusive evidence of the character of the operations.
- E. A bona fide employer-employee relationship shall exist between the lessee and the driver or drivers of any motor vehicle and the lessor or any employee of the lessor shall not qualify as an employee of the lessee. If the lessor or his employee drives the leased vehicle, the relationship shall be presumed to be carriage for hire.
- F. In determining whether a bona fide employer-employee relationship exists between the lessee and the driver or drivers of any leased motor vehicle as required by E. above, the burden of proof shall be upon the proponent of the lease in any proceeding to establish whether or not a lease in fact exists.

Comment: The Commission will consider the following factors to be among those material in determining whether an employer-employee relationship exists:

1. The manner and amount of compensation paid to the employee, whether characterized as wages or not;
2. Whether the employee's name has been entered upon the payroll of the employer;



3. Whether social security taxes, unemployment compensation premiums, income tax withholding and disability payments or other payments, have been paid by the employer on the employee's account, if the employer would be required by law to do so for a non-lessor employee;
  4. Whether any such payments initially made by the employer as lease rentals have been charged back to the employee in such manner that any such payments are ultimately borne by him;
  5. Whether the employer is responsible for the maintenance of, and the cost of gasoline and oil used in, the motor vehicles employed by the employer in his transportation business;
  6. The duration of the agreement between the parties;
  7. Whether the employee is required to be available for work at all times and cannot refuse driving assignments;
  8. Whether the employer has the right to reprimand this employee in the same manner as all other employees without regard to the employee's ownership interest in the motor vehicle;
  9. Whether this employee is covered by the employer's master insurance policy;
  10. Whether this employee has to keep in constant touch with the employer's nearest terminal after a shipment is completed so as to be available for a return load, and whether, if there is no return order, work may or may not be solicited by this employee.
- G. In any proceeding to determine whether or not an agreement constitutes a lease under this part, the reasonableness of the compensation paid for the rental of the motor vehicle shall be considered as a material factor in determining whether or not an agreement constitutes a valid lease or was a device to evade applicable rates. The burden of proof

shall be upon the respondent or proponent of the lease in any such proceeding to prove that the compensation stated in the lease was reasonable.

Comment: The Commission will consider as probative the original and depreciated cost of the equipment leased and the availability of, and rental charge for, similar motor vehicles from independent leasing companies;

- H. The lessee shall be responsible for maintaining accident and liability insurance required by law;
- I. The motor vehicle leased shall not display the symbols required by Public Utilities Code Section 3543 on such motor vehicle for the duration of the term of the lease;
- J. A carrier-lessor shall delete the leased motor vehicle from its equipment list on file with the Commission for the duration of the term of the lease;
- K. A carrier leasing a motor vehicle pursuant to the provisions of this part shall maintain and keep available for Commission staff inspection all records pertaining to each leased motor vehicle for a period of not less than three years.

#### SCOPE

- A. This part establishes minimum leasing regulations only and in case of conflict between this part and provisions of a minimum rate tariff of this Commission, the minimum rate tariff shall prevail.
- B. The provisions of this part shall not apply to:
  - 1. The leasing of motor vehicles to the Federal Government, the State, a county, a city, or a city and county.

DEVIATIONS

Upon prior application and a showing of good cause, the Commission may, with or without a hearing, authorize deviations from any or all of the provisions of this part.

PART III

REGULATION OF LEASING TO CARRIERS FROM SHIPPERS

General Definitions

A. "Lease" means any contract, or agreement, or arrangement, other than a conditional sales contract, a chattel mortgage, or a statutory lien, whereby any person, firm, or corporation who or which owns, controls, or is entitled to possession or control of any motor vehicle, transfers to any other person, firm, or corporation the right to possession and control of such motor vehicle.

B. "Carrier" means every carrier as described in Public Utilities Code Sections 3511 and 3911.

Comment: The Commission intends this definition to include all carriers transporting property over the public highways regulated by the Public Utilities Code.

C. "Motor vehicle" means every motor truck, truck tractor, other self-propelled vehicle, trailer, semi-trailer, mobile container or dolly used for transportation of property over the public highways.

Comment: "Mobile container" means a box, platform or container, which is attached to a chassis with wheels to form a trailer or semi-trailer for movement over the public highways.

D. "Lessor" means any person, firm, or corporation who or which owns or controls, or has the right to possession or control of, a motor vehicle and who or which leases the same to any lessee.

E. "Lessee" means any person, firm, or corporation who or which leases any motor vehicle from a lessor.

F. "Non-carrier" means every person, firm, or corporation engaged in any business enterprise except the business of being a carrier as defined above.

G. "Shipper" means any non-carrier lessor who leases a motor vehicle to a carrier lessee for the transportation of property in which said non-carrier lessor has a proprietary interest, and any non-carrier lessor who arranges or procures transportation of property as agent for a person having such proprietary interest therein. "Shipper" also includes any non-carrier lessor who leases motor vehicles to a carrier, and who engages that same carrier for transportation of property by vehicles other than the leased vehicles.

Comment: The Commission intends this definition to include any person or entity who or which directly or indirectly bears the economic costs of transportation and would benefit from any reduction in those costs. This definition is also intended to include any person who deals with a carrier in one transaction as a lessor and in another transaction procures transportation for hire from the same carrier.

#### RULES

A. No carrier shall enter into or make any lease of any motor vehicle from any shipper, except in accordance with the provisions of this part.

- B. Every operation under such lease shall conform to the provisions of such lease, and the lease shall be in accordance with the requirements set forth in C. below.
- C. Every lease entered into by a carrier under this part shall conform to the following requirements:
1. Shall be in writing, contain all of the terms and conditions of the agreement, and be executed and signed by the parties thereto, or their regular employees or agents, prior to the beginning of the lease term; and a copy thereof shall be filed with the Commission within five (5) days after execution. Any amendment or modification shall be in writing and a copy thereof filed with the Commission within five (5) days after execution;
  2. Shall provide for the exclusive possession, use, supervision, direction, and control of the motor vehicle, and for the complete assumption of responsibility in respect thereto, by the lessee for the duration of the lease;
  3. Shall specifically identify the leased motor vehicle or vehicles;
  4. Shall specify the term of the lease, which shall be not less than thirty (30) consecutive days.

Exception: The thirty (30) day requirement as set forth in 4. above shall not be applicable if the leased vehicle is used exclusively in transporting fresh fruits and vegetables moving from fields of growth to packing sheds or processing plants, or to accumulation stations; but such lease for less than thirty (30) days shall comply with all other requirements of this part and shall specify

the time or date when such lease shall commence and end, either by reference to specific dates, or to the harvest season of specified commodities.

Comment: The Commission intends to except the above transportation from the 30-day requirement in conformance with legislative policy declared in Section 3661; further; because of the perishable nature of the product, it is necessary to expeditiously move said products from fields of growth to packing sheds or processing plants or accumulation stations as quickly after harvesting as possible.

5. Shall specify the compensation to be paid by the lessee for the rental of the motor vehicle, which compensation shall be stated in a definite dollar amount and shall not be based upon a division or percentage of any tariff rate or rates or contingent upon the actual usage of the motor vehicle, except that the lease may include a provision for the payment of an additional consideration based upon an excess of miles beyond a fixed amount during the term of the lease, provided such fixed amount of miles is representative of normal use; and said compensation shall be a reasonable rental for the motor vehicle leased.

Comment: This section is intended to prohibit the payment of excessive rentals to shippers, as defined above, as a device to accomplish rebates.

- D. In any proceeding to determine whether or not an agreement constitutes a lease under this part, the reasonableness of the compensation paid for the rental of the motor vehicle shall be considered as a material factor in determining whether or not an agreement constitutes a valid lease or is a rebate. The

burden of proof shall be upon the respondent or proponent of the lease in any such proceeding to prove that the compensation stated in the lease was reasonable.

Comment: The Commission will consider as probative the original and depreciated cost of the equipment leased and the availability of and the rental charge for similar motor vehicles from independent leasing companies.

- E. The lessee shall be responsible for maintaining accident and liability insurance required by law;
- F. A carrier-lessee shall place its identifying symbols as required by Public Utilities Code Section 3543 on the leased motor vehicle for the duration of the term of the lease;
- G. A carrier-lessee shall add such leased motor vehicle to its equipment list on file with the Commission for the duration of the term of the lease;
- H. A carrier leasing a motor vehicle pursuant to the provisions of this general order shall maintain and keep available for Commission staff inspection all records pertaining to each leased motor vehicle for a period of not less than three (3) years.

#### SCOPE

- A. This part establishes minimum leasing regulations only. In the case of conflict between the minimum rate tariff of this Commission and this part, the minimum rate tariff shall prevail.
- B. The provisions of this part shall not apply to:
  - 1. The leasing of motor vehicles without drivers from any person, firm, or corporation whose principal business is the leasing of motor vehicles without drivers.

DEVIATIONS

Upon prior application and a showing of good cause, the Commission may, with or without a hearing, authorize deviations from any or all of the provisions of this part.

SEVERABILITY

The Commission intends Part III of this general order as a separate and distinct legislative act from Parts I and II. The Commission's authority to promulgate this part is derived from Public Utilities Code Sections 451, 454, 3665, 3669 and 4014. If Part III is declared invalid, such invalidity shall not affect the other parts of this general order those parts being promulgated pursuant to Public Utilities Code Section 3547.



Appendix B  
(California Trucking  
Association, Exh.  
No. 5)

PART I

REGULATION OF LEASING  
FROM A CARRIER TO A NON-CARRIER

SECTION 1: Definitions

- A. CARRIER means every carrier as described in Sections 3511 and 3911 of the Public Utilities Code.
- B. LEASE means any contract or arrangement, other than a sale, a conditional sales contract, a chattel mortgage or a statutory lien, whereby any person, firm, or corporation (herein called the lessor) who or which owns, controls, or is entitled to the possession of any motor vehicle, transfers to any other person, firm, or corporation (herein called the lessee) the right to possession and control of such motor vehicle. (LEASE does not include a transaction subject to transportation rates based on vehicle units as prescribed by the Commission in any Minimum Rate Tariff or published in any Common Carrier Tariff.)
- C. MOTOR VEHICLE means every motor truck, truck tractor, other self-propelled vehicle, trailer, semi-trailer, or dolly used for transportation of property over the public highways.
- D. NON-CARRIER means every person, firm, or corporation engaged in any business enterprise except for-hire transportation of property.

SECTION 2: Rules

- A. No carrier shall enter into or make any lease of any motor vehicle to any non-carrier except in accordance with the provisions of this General Order.
- B. Every carrier who enters into a lease of a motor vehicle to a non-carrier shall perform the terms and conditions of the written lease entered into in accordance with the provisions of Paragraph C below, and shall require the lessee to perform the terms and conditions thereof, without deviation.

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C. Every lease from a carrier to a non-carrier shall conform to the following requirements:

1. Shall be in writing, contain all of the terms and conditions of the agreement, and be executed and signed by the parties thereto, or their regular employees or agents, prior to the beginning of the lease term; and a copy thereof shall be filed with the Commission within five (5) days thereafter. Any amendment or modification shall be in writing and a copy thereof filed with the Commission within five (5) days after execution;
2. Shall provide for the exclusive possession, use, supervision, direction, and control of the motor vehicle, and for the complete assumption of responsibility in respect thereto, by the lessee for the duration of the lease;
3. Shall specifically identify the leased motor vehicle or vehicles;
4. Shall specify the term of the lease, which shall be not less than thirty (30) consecutive days;
5. Shall specify the compensation to be paid by the lessee for the rental of the motor vehicle, which compensation shall not be based upon a division or percentage of any tariff rate or rates or contingent upon the actual usage of the motor vehicle (except the lease may include a provision for the payment of an additional consideration based upon an excess of miles beyond a fixed amount during the term of the lease, provided such fixed amount of miles is representative of normal use);
6. Shall provide that the motor vehicle shall be operated by the lessee or an employee thereof, and that the lessee shall furnish his own driver who is neither the lessor nor an employee of the lessor.

D. No carrier shall enter into or make any lease of any motor vehicle which constitutes a rebate, allowance, refund, remittance, or any other rate concession to any non-carrier in violation of the Public Utilities Code.

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- E. Every carrier who enters into a lease of a motor vehicle to a non-carrier shall maintain a copy of the lease and complete records of such transaction available for inspection by the Commission staff for a period of not less than three (3) years.

SECTION 3: Scope

- A. This General Order establishes minimum leasing regulations only and is not in substitution of the provisions of the minimum rate tariffs of this Commission.
- B. The provisions of this General Order shall not apply to:
  - 1. The leasing of motor vehicles without drivers from any person, firm, or corporation whose principal business is the leasing of motor vehicles without drivers;
  - 2. The leasing of motor vehicles to the Federal Government, the State, a county, a city, or a city and county.

PART II

REGULATION OF LEASING  
BETWEEN CARRIERS

SECTION 1: Definitions

- A. CARRIER means every carrier as described in Sections 3511 and 3911 of the Public Utilities Code.
- B. LEASE means any contract or arrangement, other than a sale, a conditional sales contract, a chattel mortgage or a statutory lien, whereby any person, firm, or corporation (herein called the lessor) who or which owns, controls, or is entitled to the possession of any motor vehicle, transfers to any other person, firm, or corporation (herein called the lessee) the right to possession and control of such motor vehicle.
- C. MOTOR VEHICLE means every motor truck, truck tractor, other self-propelled vehicle, trailer, semi-trailer, or dolly used for transportation of property over the public highways.

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SECTION 2: Rules

- A. No carrier shall enter into or make any lease of any motor vehicle to any other carrier except in accordance with the provisions of this General Order.
- B. Every carrier who enters into a lease of a motor vehicle with another carrier shall perform the terms and conditions of the written lease entered into in accordance with the provisions of Paragraph C below.
- C. Every lease between carriers shall conform to the following requirements:
  - 1. Shall be in writing, contain all of the terms and conditions of the agreement, and be executed and signed by the parties thereto, or their regular employees or agents;
  - 2. Shall provide for the exclusive possession, use, supervision, direction, and control of the motor vehicle, and for the complete assumption of responsibility in respect thereto, by the lessee for the duration of the lease;
  - 3. Shall specifically identify the leased motor vehicle or vehicles;
  - 4. Shall specify the term of the lease;
  - 5. Shall specify the compensation to be paid by the lessee for the rental of the motor vehicle.
- D. No carrier shall enter into or make any lease of motor vehicle equipment which constitutes a rebate, allowance, refund, remittance, or any other rate concession in violation of the Public Utilities Code.
- E. A carrier who enters into a lease of a motor vehicle to another carrier shall maintain a copy of the lease and complete records of such transaction available for inspection by the Commission staff for a period of not less than three (3) years.

SECTION 3: Scope

- A. This General Order establishes minimum leasing regulations only and is not in substitution of the provisions of the minimum rate tariffs of this Commission.

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B. The provisions of this General Order shall not apply to:

1. The leasing of motor vehicles without drivers from any person, firm, or corporation whose principal business is the leasing of motor vehicles without drivers;
2. The interchange of equipment between carriers for the purpose of facilitating through movements of lading;
3. The temporary loan of trailing equipment by one carrier to another carrier to meet any temporary equipment demands of the latter.

Appendix C

GENERAL ORDER NO. 130

PUBLIC UTILITIES COMMISSION OF THE  
STATE OF CALIFORNIA

RULES AND REGULATIONS TO GOVERN THE  
LEASING OF MOTOR VEHICLES

GENERAL PROVISIONS

- A. CARRIER means every carrier described in Section 3511 of the Public Utilities Code.
- B. LEASE means any contract or arrangement, other than a sale, a conditional sales contract, a chattel mortgage or statutory lien, whereby any person, firm, or corporation (herein called the lessor) who or which owns, controls, or is entitled to the possession of any motor vehicle, transfers to any other person, firm, or corporation (herein called the lessee) the right to possession and control of such motor vehicle. (LEASE does not include a subhaul agreement or a transaction subject to transportation rates based on vehicle units as prescribed by the Commission in any minimum rate tariff or published in any common carrier tariff.)
- C. MOTOR VEHICLE means every motor truck, tractor, other self-propelled vehicle, trailer, semi-trailer, or dolly used for transportation of property over the public highways.
- D. NONCARRIER means every person, firm, or corporation engaged in any business enterprise except for-hire transportation of property.
- E. No carrier shall enter into or make any lease of a motor vehicle which constitutes a rebate, allowance, refund, remittance, or any other evasion of regulation in violation of the Public Utilities Code.
- F. A carrier which enters into a lease of a motor vehicle shall:
  - 1. Keep a copy of the lease and complete records of such transaction available for inspection by the Commission staff for a period of not less than three years from the termination of the lease.
  - 2. File a copy thereof with the Commission within five days thereafter. Any amendment or modification shall be in writing and a copy thereof filed with the Commission within five days after execution.

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- G. When the term of the lease is thirty days or more:
  - 1. A carrier-lessor shall delete the leased motor vehicle from its equipment list on file with the Commission for the duration of the term of the lease;
  - 2. A carrier-lessee shall add such leased motor vehicle to its equipment list on file with the Commission for the duration of the term of the lease.
- H. A carrier-lessee shall place its identifying symbols as required by Public Utilities Code Section 3543 on the leased motor vehicle for the duration of the term of the lease.
- I. The provisions of this general order shall not apply to:
  - 1. The leasing of motor vehicles without drivers from any person, firm, or corporation whose principal business is the leasing of motor vehicles without drivers;
  - 2. The interchange of equipment between carriers for the purpose of facilitating through movements of lading;
  - 3. The temporary loan of trailing equipment by one carrier to another carrier to meet any temporary equipment demands of the latter;
  - 4. The employment of drivers without motor vehicles from any person, firm, or corporation whose principal business is the provision of temporary employees;
  - 5. The leasing of motor vehicles to the Federal Government, the State, a county, a city, or a city and county.
- J. In any proceeding before the Commission the burden of proof of the fact that the compensation stated in the lease is reasonable shall be upon the respondent or proponent of the lease.
- K. This general order establishes minimum leasing regulations only and in case of conflict between this general order and the provisions of a minimum rate tariff of this Commission, the minimum rate tariff shall prevail.
- L. Upon prior application and a showing of good cause, the Commission may, with or without a hearing, authorize deviations from any or all of the provisions of this general order.

Appendix C

PART I

REGULATION OF LEASING BETWEEN CARRIERS

- A. No carrier shall enter into or make any lease of any motor vehicle to any other carrier except in accordance with the general provisions of this general order and the provisions of this part.
- B. Every lease between carriers shall conform to the following requirements:
  - 1. Shall be in writing, contain all of the terms and conditions of the agreement, and be executed and signed by the parties thereto, or their regular employees or agents;
  - 2. Shall provide for the exclusive possession, use, supervision, direction, and control of the motor vehicle, and for the complete assumption of responsibility in respect thereto, by the lessee for the duration of the lease; except that if the lessor or an employee of the lessor does not operate the leased motor vehicle then the lease may provide that maintenance of the motor vehicle shall be the lessor's obligation;
  - 3. Shall specifically identify the motor vehicle or vehicles;
  - 4. Shall specify the term of the lease;
  - 5. Shall specify the reasonable compensation to be paid by the lessee for the rental of the motor vehicle.
- C. A bona fide employer-employee relationship shall exist between the lessee and the driver or drivers of any leased motor vehicle.



Appendix C

PART II

REGULATION OF LEASING BY CARRIERS TO NONCARRIERS

- A. No carrier shall enter into or make any lease of any motor vehicle to any noncarrier except in accordance with the general provisions of this general order and the provisions of this part.
- B. Every carrier who enters into a lease of a motor vehicle to a noncarrier shall require the lessee to perform the terms and conditions thereof, without deviation.
- C. Every lease from a carrier to a noncarrier shall conform to the following requirements:
  - 1. Shall be in writing, contain all of the terms and conditions of the agreement, and be executed and signed by the parties thereto, or their regular employees or agents, prior to the beginning of the lease term;
  - 2. Shall provide for the exclusive possession, use, supervision, direction, and control of the motor vehicle, and for the complete assumption of responsibility in respect thereto, by the lessee for the duration of the lease; except that the lease may provide that maintenance of the motor vehicle shall be the lessor's obligation;
  - 3. Shall specifically identify the motor vehicle or vehicles;
  - 4. Shall specify the term of the lease;
  - 5. Shall specify the reasonable compensation to be paid by the lessee for the rental of the motor vehicle.
  - 6. Shall provide that the motor vehicle shall be operated by the lessee or an employee thereof.
- D. The lessor or any employee of the lessor shall not qualify as an employee of the lessee for the purposes of this part.
- E. The motor vehicle leased shall not display the symbols required by Public Utilities Code Section 3543 on such motor vehicle for the duration of the term of the lease.

Appendix C

PART III

REGULATION OF LEASING TO CARRIERS FROM NONCARRIERS

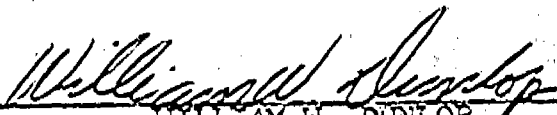
- A. No carrier shall enter into or make any lease of any motor vehicle from any noncarrier except in accordance with the general provisions of this general order and the provisions of this part.
- B. Every lease from a noncarrier to a carrier shall conform to the following requirements:
1. Shall be in writing, contain all of the terms and conditions of the agreement, and be executed and signed by the parties thereto, or their regular employees or agents, prior to the beginning of the lease term;
  2. Shall provide for the exclusive possession, use, supervision, direction, and control of the motor vehicle, and for the complete assumption of responsibility in respect thereto, by the lessee for the duration of the lease; except that the lease may provide that maintenance of the motor vehicle shall be the lessor's obligation;
  3. Shall specifically identify the motor vehicle or vehicles;
  4. Shall specify the term of the lease;
  5. Shall specify the reasonable compensation to be paid by the lessee for the rental of the motor vehicle.

SEVERABILITY

The Commission intends PART III of this general order to be severable from Parts I and II. If Part III is declared invalid, such invalidity shall not affect the other parts of this general order.

The effective date of this General Order shall be September 1, 1970.

Issued at San Francisco, California, the 14th day of APRIL, 1970.

  
WILLIAM W. DUNLOP  
Secretary of the Public Utilities  
Commission of the State of California

## Appendix D

APPEARANCES

Arnold Abrott, for Northern California Ready Mixed Concrete & Materials Association, Inc.; Sam Anzalone, Harold Beatty, for Central Supply Co.; Beckman Exp. & Whse. Co.; E. J. Bertana, for Pacific Cement & Aggregates; Russell Bevans, for Draymen's Association of San Francisco, Inc.; E. O. Blackman, for California Dump Truck Owners Assn.; George Blanchard; Charles L. Brauntz, for Transportation Equipment Rentals Inc.; Brundage & Hackler, by Daniel Feins, for Western Conference of Teamsters; Asa Button, for Spreckels Sugar Co.; Clair E. Campbell, for Camall Service; George P. Cate, for Pat Cate Trucking; Charles H. Caterino, for Pioneer Division, The Flintkote Co.; J. R. Cedarblade, for No. Calif. Ready Mixed Concrete and Materials Assn., Inc.; Mario Cioletti, for The Sherwin-Williams Co.; Clarence R. Colley, Kenneth C. Delaney, for the Los Angeles Chamber of Commerce; Walter Dennison, for Western Transp. Co.; William Dobrowski, for Ringsby-Pacific Ltd.; T. P. Donaldson, for Mobile Oil Corp.; John R. Drollinger, for Highway Carriers Assoc.; Lawrence Enbody, for Western Conference of Teamsters; Donald M. Enos, for Owens Illinois Inc.; Cleo Evans, for Evans Tank Line, Inc.; A. E. Evers, for National Lead Co.; G. B. Fink, for The Dow Chemical Co.; Milton W. Flack, for Highway Carriers Association; Robert B. Fleming, for Ringsby System; Milton Francis, for Milton E. Francis Trucking; Vernon B. Fry; B. R. Garcia, for B. R. Garcia Traffic Service; J. D. George, for Jos. T. Ryerson & Son Inc.; Waldo A. Gillette, for Monolith Portland Cement Co.; E. H. Griffiths, for Encinal Terminals, Bay Freight Lines, Cooper Trucking, Inc., Marion Ward, Aero Special Delivery & Messenger Service, and Sparkie's Special Delivery & Messenger Service; H. W. Haage, for National Can Corp.; Handler, Baker & Greene by Daniel W. Baker, for Coast Drayage, Tankways, Morris Draying Company, Hill Transportation Co., South City Freight Lines, Doudell Trucking Company, Sheldon Transportation Co., G.R.G. Trucking, Lodi Truck Service, Conrotto Trucking Co., and Robert Pine Trucking Co.; Richard F. Hanley, for S & W Fine Foods; Donald G. Harris, for Continental Grain Company; John P. Hellmann, for Allied Chemical Corporation; Donald E. Hesse; Ralph Hubbard, for Calif. Farm Bureau Fed.;

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Fred Imhof and Scott Wilcott, for Southern California Rock Products Assn.; Phil Jacobson; Louis A. Joaquin, for Lou-Jak Trucking Service; Willard S. Johnson, for Hills Transportation Co.. Publishers Motor Transport, Karlson Bros. Trucking Service, and Talbot Transportation Co.; Meyer Kapler, for American Forest Products; Armand Karp, for Callison Truck Lines, Inc.; W. E. King, for Crown Zellerbach Corp.; Knapp, Gill, Hibbert & Stevens, by Wyman C. Knapp, for California Moving & Storage Association, Inc., and Red Arrow Bonded Messenger Service; H. F. Kollmyer, for California Trucking Assn.; Robert K. Lancefield, for Consolidated Freightways Corporation of Delaware; Gordon Larsen; Jack Littlefield, for Camall Service; R. E. Lloyd, for Pacific Vegetable Oil Corp.; Frank Loughran, for Jet Delivery Service, ABC Messenger Service, Inc., and 1 2 3 Messenger Service; W. F. McCann, for Container Corp. of America; John McSweeney, for Delta Lines; Mrs. F. L. Martin, for F. L. Martin Trucking; William Mitze, for Riverside Div., American Cement Corp.; Donald Murchison, for Evans Tank Line, Inc., Olympic Delivery Service Inc., dba Rocket Messenger Service, Louie F. Rodriguez dba Sweet Trucking Company, Webster Tank Truck Service, Inc., W. R. Webster & W. A. Webster dba Dial Truck Lease, Rams Express, and Universal Mail Delivery Service; Richard H. Murphy, for Richmond Crane Rigging & Drayage Inc.; D. H. Macken, for Traffic Managers Conference of Calif.; Hugh N. Orr, for W. Kenneth & Lynden M. Brightwell Trucking, and N. S. & R. S. Hollingshead Trucking; Loren R. Pincus, for Western Truck Manpower, Inc.; Arlo D. Poe, for California Trucking Association; David B. Porter, for Cannery League of California; John T. Reed, for California Manufacturers Assn.; Jack A. Rexelle, for Lou-Jak Trucking Service; Gordon A. Rodgers, for Union Carbide Corp.; Martin J. Rosen, for Schaldach Truck Lines, Inc., Valley Parcel Service, H E C Trucking Corporation, Aggregate Trucking Inc., Clark Trucking Service, Inc., ABC Towing Service of Salinas Inc., Sagora Trucking Inc., Aggregates Associated Inc., and McDermott Trucking; Ben Roth, for Crown Zellerbach Corp.; Russell & Schureman, by R. Y. Schureman, for National Trailer Convoy, Inc., Morgan Drive Away Inc., Transit Homes, Inc., Max Binswanger Trucking, Daniel Lohnes Trucking Co., Matich Transportation Co., More Truck Lines, and Valley Transportation Co.; Barnett L. Schwartz, for The Broadway Dept. Stores; Robert R. Schwenig, for Sears, Roebuck & Co.; Sam O. Sciortino for Lads Frt. Inc.; Wilber C. Shaffer;

## Appendix D

George B. Shannon, for Southwestern Portland Cement Co.; Don B. Shields, for Highway Carriers Ass'n.; R. W. Skirvin, for Crown Zellerbach Corp.; John MacDonald Smith & Thomas H. Gonser, for Pacific Motor Trucking Co., Union Terminal Warehouse, and Bankers Leasing Corporation; R. W. Smith, for California Trucking Assn.; Fred A. Sorensen, for Sorensen Trucking; Oscar C. Sorenson, for Barrett Mobile Home Transport Inc.; O. H. Stieber, for Crown Zellerbach Corp.; Alex O. Swanson, for San Diego County Rock Producers Assoc.; W. Paul Tarter, for Wm. Volker & Company; Frank L. Thall, for Cargill, Incorporated; Garrett & Thomas Livestock Trans. Inc., by John B. Thomas, for Garrett & Thomas; Roy Thompson, for Walkup Equipment Co.; M. G. Van Matre, for Speedy Transport, Inc.; R. S. VonNahme, for National Lead Company; Howard C. Vose, for Dealers Transit, Inc.; L. A. Waldien, for Barrett Mobil Home Transport; Milton A. Walker, for Fibreboard Corporation; Patrick J. Walsh, for James Transfer & Storage Co.; J. Harvey Watson, for Ringsby-Pacific Ltd.; Lynn M. Watwood, Jr., for Kaiser Cement & Gypsum Corporation; Charles D. Weiss, Jr., for Utility Trailer Sale Co.; J. W. Wiley, for Sheldon Oil Co.; Flake Willis, for Barbero Truck Lines, and McCloud River Trucking Co.; Bill Willmer; D. E. Winter, for Pacific West Truck Assn. Inc.; L. A. Wixted, for Blue Diamond Co.; Chas A. Woelfel, for Calif. Moving & Storage Assn.; John T. Wright, for Continental Can Co.; Leonard C. Wills, for Wills Trucking Service, Inc.; Adam Resendes, for Resendes Trucking; W. E. Hertwig, for J. C. Penney Company, Inc.; E. P. Sweet, for The Pillsbury Company; Robert C. Johnson, for Bekins Van Lines Co.; Frank Loughran, for Walkup Equipment Co.; Marquam C. George, for Colma Drayage Inc., Anderson Cartage, Moore Truck Lines, and Cademartori Trucking; G. Ralph Grago, for Associated Independent Owner-Operators, Inc.; Cromwell Warner, for Camall Service; W. L. McCracken, for Greyhound Lines, Inc.; Bert Collins, for Bass Transportation Co., Inc.; Robert K. Lancefield, for Consolidated Freightways Corporation of Delaware; Charles J. Chodzko, Jr., for California Cartage Co., Inc.; Elke, Farella, Braun & Martel, by M. Fred Rose, for Western Truck Manpower; Thelen, Marrin, Johnson & Bridges, by Max Thelen, Jr., for Northern California Ready Mix Concrete Materials Association; Frank L. Thall, for Cargill, Incorporated; Reed B. Tibbetts, for Industrial Traffic Association of San Francisco;

Appendix D

John J. Damerell, for The Western Union  
Telegraph Company; Harry C. Phelan, Jr., for  
California Asphalt Pavement Association;  
Handler, Baker & Greene by Daniel W. Baker,  
for Scoffone Trucking Service; R. L. Ncon,  
for Davis Wire Corporation; Norman I. Molaug,  
for J.C. Penney Company; Lynn M. Warwood, Jr.,  
for Kaiser Cement and Gypsum Corporation;  
W. Ray James, for Calmay Van Lines, Inc.;  
James A. Nevil, for Nevil Storage Company;  
Harold F. Culy, for Thompson Bros. Freight  
Forwarding Co., Inc.; James Quintrall, for  
Los Angeles Warehousemen's Assn; Arthur Glanz, Esq.;  
George Harold Roe, for California Portland  
Cement Company; J. W. Bohannon, Jackson W. Kendall;  
and Howard C. Vose; interested parties.  
David R. Larrouy, John C. Gilman, and Harold J.  
McCarthy, Counsel, and H. L. Farmer, for the  
Commission staff.