

ek/vo

Decision No. 79792.

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Case No. 5670
Order Granting Rehearing
Decision No. 77776
(Dated September 29, 1970)

(For List of Appearances See Appendix A)

INTERIM OPINION

At the San Francisco December 7, 1971 adjourned hearing in Case No. 5432 (Order Setting Hearing 601, dated September 22, 1970) et al., a proposed revision of the Commission's General Order No. 102-C was presented in evidence (Exhibit 2) by the Commission's Transportation Division staff. This General Order pertains to the bonding requirements of specified for-hire carriers in connection with subhauling or leasing of equipment.

The staff report notes that Statutes of 1969, Chapters 173 and 1004, enacted by the California Legislature, amended Sections 1074 and 3575 of the Public Utilities Code by adding Dump Truck Carrier to the class of highway carriers required to file a bond with the Commission to secure payment of claims by subhaulers and employee-lessors of such highway carriers. Also the bonding requirements of carriers previously applicable to the lease of all equipment was limited by the Legislature to the lease of equipment from employees only. In Exhibit 2 the staff sets forth a recommended modification to the Commission's General Order No. 102-C which is designed to reflect the amended provisions of Sections 1074 and 3575 of the Public Utilities Code.

The Commission finds that its General Order No. 102-C should be revised, as recommended by the staff, so that said General Order will reflect the current statutory provisions of Sections 1074 and 3575 of the Public Utilities Code. It is concluded that the revised General Order No. 102-C should be superseded by General Order No. 102-D, to become effective approximately ninety days after the effective date of the order herein.

INTERIM ORDER

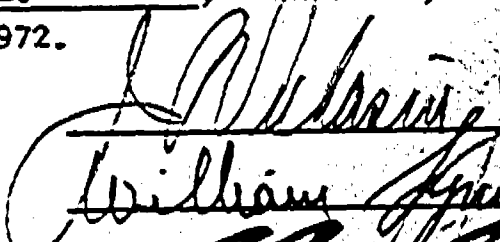
IT IS ORDERED that:

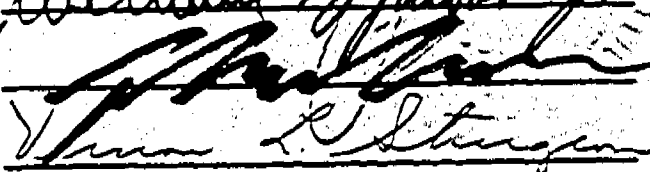
1. General Order No. 102-D, which is attached hereto and by this reference made a part hereof, is hereby adopted to become effective July 1, 1972, superseding General Order No. 102-C, which is hereby cancelled effective July 1, 1972.

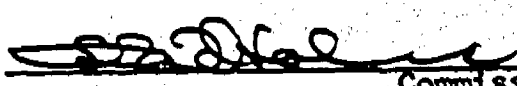
2. The Secretary of the Commission shall serve a copy of this order upon each highway carrier described in Sections 1074 and 3575 of the Public Utilities Code.

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

Dated at San Francisco, California, this 14th
day of MARCH, 1972.



Chairman


Thomas L. Sturgeon


Commissioners

APPENDIX A

LIST OF APPEARANCES

Petitioner: E. O. Blackman, for California Dump Truck Owners Association and Associated Independent Owner Operators.

Respondents: T. W. Curley, for Western Milk Transport; Ron Davis, for Associated Freight Lines; Armand Karp, for Alltrans Express California, Inc.; J. McSweeney, for Delta Lines.

Interested Parties: Keith M. Brown, for The Industrial Traffic Association of San Francisco; Richard E. Costello, Attorney at Law, for Spreckels Sugar Division, Amstar Corp.; Donald R. Carnahan, for Shell Oil Co.; James R. Foote, by Ralph Grago, for Associated Independent Owner Operators; Bill Hata, for Sherwin Williams Co.; J. C. Kaspar, H. F. Kollmeyer and Richard W. Smith, Attorney at Law, for California Trucking Association; Arlo D. Poe, Attorney at Law, for Transport Clearings of Los Angeles; William M. Larimore and A. L. Libra, Attorney at Law, for California Manufacturers Association; William D. Mayer, for Cannery League of California; Tad Muraoka, for IBM Corp.; Milton W. Flack, Attorney at Law, and Don B. Shields, for Highway Carriers Association; Albert T. Suter, Attorney at Law, for Pacific Southcoast Freight Bureau; Raymond D. Vinick, for Hunt Wesson Foods, Inc.; Gary T. Ferrulli, for Simco-Pacific; C. T. Gratiot, for Continental Can Co.; N. I. Molaug, for Western Traffic Conference; Raymond Mosser, for J. C. Penny Company; C. Ralph Eighmy, for Bay Area Dump Truck Owner Operator Association; James Quintrall, for Los Angeles Warehousemen's Association; Kenneth C. DeLaney, for Los Angeles Area Chamber of Commerce; William D. Grindrod, for Norris Industries and Traffic Managers Conference of California; Eugene P. Sweet, for The Pillsbury Company; Howard E. Meyers, for Freight Advisory Service; and Lloyd K. Hoffman, for Department General Services, State of California.

Commission Staff: Elinore C. Morgan, Attorney at Law, H. L. Farmer, Robert E. Walker and John R. Laurie.

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

PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA

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

Adopted MAR 14 1972, Effective July 1, 1972

Decision No. 79792, Case No. 5670

1. Carriers Subject to this Order:

This General Order applies to all carriers as defined herein. Every carrier subject to this General Order shall clearly mark all shipping documents pertaining to any shipment that is subhauled or carried in a vehicle leased from a lessor-employee, so as to show the authority under which it is carried. Such marking shall be by means of printing, typewriting, rubber stamp or other device of equal clarity.

2. Definitions:

- a. Carrier means all Highway Common Carriers, Petroleum Irregular Route Carriers, Cement Carriers, Radial Highway Common Carriers, Highway Contract Carriers, Cement Contract Carriers, and Dump Truck Carriers.
- b. Prime Carrier (principal or overlying carrier) means a carrier who or which contracts with a shipper to provide transportation service for the latter, but, in turn, engages the services of another carrier known as the subhauler (underlying carrier) to perform that service. The term prime carrier also includes any subhauler who engages other carriers to perform all or part of the services which such subhauler has agreed to render for a prime carrier. Such an engaged carrier is designated as a sub-subhauler and as to it, the original subhauler is a prime carrier.

- c. Subhauler (underlying carrier) means any carrier who renders service for a prime carrier (principal or overlying carrier), for a specified recompense, for a specified result, under the control of the overlying carrier as to the result of the work only and not as to the means by which such result is accomplished. This term includes sub-subhaulers in appropriate cases.
- d. Lessor-Employee means an employee of a carrier subject to this order, which employee leases equipment to its employer.
- e. Lease means a contract by which any person, who or which owns, controls or is entitled to the possession of any vehicle or vehicles of the types described in Section 3510 of the Public Utilities Code, called the lessor-employee, lets or hires the same to its employer carrier, which is subject to the provisions of this general order, and called the lessee, for the purpose of having such vehicle or vehicles used in the for-hire transportation business of such lessee.
- f. Completion of shipment by a subhauler or sub-subhauler means that the transportation agreed to be performed by such subhauler or sub-subhauler has been performed in full and evidenced by delivery of the receipted bill of lading or other written shipping document or documents relating to such transportation to the prime carrier. In the event that a contract of subhauling or sub-subhauling contemplates services over a period greater than one calendar month the subhauler or sub-subhauler shall be entitled to payment for his services on a monthly basis for the purpose of determining the date on which a claim may be filed under Section 5(c) hereof.
- g. Termination of lease occurs when the period covered by the contract of lease has expired as evidenced by the terms thereof.

- h. Claim means a demand by a subhauler or sub-subhauler for an amount due for the transportation of property, from the carrier for whom subhauling or sub-subhauling has been performed; or by a lessor-employee for an amount due as equipment rental from the carrier to whom such equipment has been leased.

3. Agreement Between Parties:

- a. Every agreement for subhauling, sub-subhauling or leasing of motor vehicles from a lessor-employee entered into by a carrier shall be in writing and signed by the parties prior to, or within five days after, the commencement of any subhaul or sub-subhaul service or such lease of equipment. Such writing shall contain all of the terms of such agreement and shall specify all charges payable thereunder for subhaul or sub-subhaul service or lease of equipment, and shall include the name and address of the surety providing the bond required therein as well as the expiration date of such bond.
- b. A copy of each agreement shall be retained and preserved by all parties thereto, subject to the Commission's inspection, for a period of not less than three years from the date of execution.

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

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

5. Bonding Requirements:

- a. No carrier shall engage any subhauler, or sub-subhauler or lease any equipment as a lessee from a lessor-employee unless

and until it has on file with the Commission a good and sufficient bond in such form as the Commission may deem proper, in a sum of not less than \$10,000, which bond shall secure the payment of claims of subhauler, sub-subhaulers and lessor-employees of highway carriers in accordance with the terms of paragraphs b, c, d, e, and f hereof.

- b. Each bond filed pursuant to the foregoing shall cover the full extent of the carrier's operations; that such a bond may cover more than one operative authority held by the same carrier; that when a carrier with such a bond on file with the Commission obtains additional operative authority, said bond shall be revised or reissued to cover the additional operative authority; and that the name of the carrier's surety company in any bond filed pursuant hereto will be made public by the Commission upon reasonable request therefor.
- c. The terms of the bond shall include: that any person or persons to whom an amount may be due and payable may file a claim therefor with the surety; that upon the filing of the claim, the surety shall notify the Commission and the carrier in writing of such filing; that such notification to the Commission shall be addressed to the Public Utilities Commission of the State of California at its office in San Francisco; that suit against the surety shall be commenced within one year after the filing of said claim; and that the surety waives any rights it may have under Section 2845 of the Civil Code of the State of California.
- d. The bond required by paragraph (a) hereof shall be filed by the carrier as principal and by a qualified surety insurer, authorized to do business in the State of California, as surety, for the benefit of any person, firm or corporation serving as a subhauler or sub-subhauler for or as a lessor-employee of equipment to, said carrier.

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- e. A subhauler, sub-subhauler or lessor-employee of equipment to whom an amount may be due, either as transportation charges for any shipment subhauled or as the rental of any equipment leased, and not paid within the time period provided in Section 4 hereof, may file a claim therefor with the surety and notify the Commission of such filing against the bond herein required. All such claims must be filed within 120 days after the date of completion of shipment or termination of lease or after the date on which any payment falls due under the terms of Section 4 hereof.
 - f. The surety may cancel such bond by written notice to the Public Utilities Commission of the State of California at its office in San Francisco, such cancellation to become effective 30 days after receipt of said notice by the Commission.
6. Effective Date:
The effective date of the General Order shall be the 1st day of July, 1972.

PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA

William R. Johnson

By: WILLIAM R. JOHNSON, Secretary