

Decision 88 05 063 MAY 25 1988**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application	)	
of General Drayage to amend	)	Application 87-07-049
rules to govern engagement of	)	(Filed July 31, 1987)
and payments to independent	)	
contracting subhaulers.	)	
	)	

OPINION

The application of General Drayage, a highway common carrier, recommends that the Commission require that the following procedures be instituted in respect to the treatment of subhaulers:

- "1. Commission staff to follow and enforce the existing statutory provisions in the Public Utilities Code as enumerated herein as well as other sections appropriately applicable.
- "2. Any common carrier who engages another common carrier to perform as a subhauler must pay the filed tariff rates and charges of the subhauler for all services performed.
- "3. Any common carrier who engages a contract carrier as a subhauler to perform transportation and/or related services, must pay to any and all subhaulers 95% of all revenue received by the prime carrier for the services provided. If the revenue earned by the prime carrier is from the application of any rate other than a class rate, then payment of revenue to the subhauler shall be 100% of all revenue received by the prime carrier for all services performed.
- "4. Any rate increases or special surcharges received by the prime carrier must be paid thru to the subhauler without any deductions.

- "5. No rate deductions obtained by the prime carrier can be passed thru to the subhauler.
- "6. No deductions of any kind can be taken from the earned revenue of a subhauler. Any purchases made by the subhauler from the prime carrier must be paid for as a separate transaction and unrelated to any earned transportation revenue owing to the subhauler. This includes but is not limited to, charges for trailer rental; use fees; cargo insurance; and, workmen's compensation insurance. It would be mandatory that any prime carrier requiring to be named as an additional insured on the subhauler's insurance policy must also name the subhauler as an additional insured on the prime carrier's insurance policy.
- "7. No prime carrier can cash a check for a subhauler that the prime carrier issued to pay for transportation services performed by that subhauler.
- "8. All accessorial charges performed by a subhauler are to be compensated at 100% of the prime carrier's published tariff rate.
- "9. In the event a prime carrier wishes to engage a contract carrier on a long term basis, he must execute a contract, supported by the subhauler's cost justified rated schedule on file with the commission.
- "10. Any contract between any two carriers if it covers equipment rental or usage, insurance or any other charges to be collected from the subhauler must show the basis of such charges. Insurance charges must be correlated with the hiring carrier's insurance premium and cannot be higher than the ratio of the subhauler's single transaction to the hiring carrier's business by its own equipment, including any other subhaulers engaged.
- "11. If trailing equipment or tie down equipment is provided the charge to the subhauler must be itemized. A unit charge for

trailing equipment must be by the day, week or month. The charge cannot be based on the revenue earned by the use of that equipment. The subhauler will be allowed to use such equipment during the rental period as he wishes without restriction.

- "12. No commodity can be hauled by a subhauler at less than its cost justified base rate schedule on file with the commission.
- "13. Freight claims must be handled in accordance with General Order 139. No set-offs or reserves for potential loss and damage can be deducted from subhauler earned revenue.
- "14. A subhauler is to be given an itemized statement, with each payment for services performed.
- "15. Violations of these provisions will be processed under the penalty provisions of the Public Utilities Code. Punishment must be mandatory. Any carrier attempting to or in fact engaging in any practice or device which will circumvent any of these provisions will be fined \$5,000 and/or receive a six months suspension of all operating authorities in which the carrier has an interest.
- "16. The subhauler has a right to review any prime carrier's records to verify the revenue earned and to assure himself of no liability under Item 15 above. In the event the prime carrier's records are located out of California, it is the prime carrier's responsibility to produce the records where it is convenient for the subhauler to conduct his review.
- "17. All subhaulers must submit a statement with their P.U.C. quarterly report showing the name of the prime carrier and his CAL T number and the gross revenue earned as a subhauler.
- "18. All other commission requirements must be met."

The section of the Public Utilities (PU) Code for which enforcement is recommended are Sections 493, 702, 3663, and 4848. Applicant also requests that a hearing be held to receive evidence on its recommendations.

Notice of filing of the application appeared in the Commission's Daily Calendar of August 5, 1987 and the Commission's Transportation Calendar of August 6, 1987. No comments on the application have been received.

The Commission held a three-day en banc hearing in March 1988 on the regulation of the trucking industry. One of the subjects specified for inquiry into at the hearing was the treatment of subhaulers.

Since overlying/underlying carrier relationships, including a Commission-ordered staff study of subhauling, were the subject of extensive discussion at the Commission's recent "en banc" hearings on transportation, and since the Commission has indicated that it is currently reviewing alternative procedures for pursuing issues raised during the "en banc" hearings, we will defer consideration of the issues raised by the instant application until the Commission determines the extent to which subhauling issues will be included in any proceedings initiated by the Commission as a follow-up to the transportation "en banc" hearing.

Based on the foregoing, we will dismiss this application and invite the applicant to participate in the Commission's future truck regulation proceeding.

ORDER

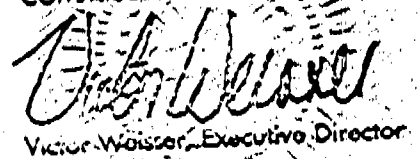
IT IS ORDERED that Application 87-07-049 is dismissed.  
This order is effective today.

Dated MAY 25 1988, at San Francisco, California.

STANLEY W. HULETT  
President

DONALD VIAL  
FREDERICK R. DUDA  
G. MITCHELL WILK  
JOHN B. O'HANIAN  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

  
Victor Woisser, Executive Director

AB

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The Commission has scheduled a three-day en banc hearing in March 1988 on the regulation of the trucking industry. One of the subjects specified for inquiry into at the hearing is the treatment of subhaulers. We think it would be redundant to simultaneously conduct two proceedings covering the treatment of subhaulers and believe that the proceeding which should go forward is the one which considers the subject against the backdrop of future trucking regulation, namely, the en banc hearing. We will therefore dismiss this application and invite applicant to attend the en banc hearing.

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Since this application relates to rulemaking and has broad policy implications, we prefer to take up this matter in an appropriate proceeding which is expected to follow the en banc.

We will, therefore, dismiss this application and invite the applicant to participate in the Commission's future truck regulation proceeding.