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Decision 90-11-059 November 21, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Regulation of General Freight Transportation by Truck.	))))	I.88-08-046 (Filed August 24, 1988)

ORIGINAL

SECOND INTERIM OPINION

Summary of Decision

We find that it is not feasible to develop a formula for division of revenues between subhaulers and prime carriers.

We also find that the proposal for amending Commission rules and regulations on leasing between carriers so that they are patterned more closely to those of the Interstate Commerce Commission (ICC) is inconsistent with California statutory requirements. Moreover, the proposal could undermine safety, create administrative problems, and have a detrimental effect on the economic well being of intrastate carriers with California operating authority.

Background

On August 24, 1988, the Commission issued Order Instituting Investigation (I.) 88-08-046 into the regulation of general freight transportation by truck. On October 12, 1989, the Commission issued Decision (D.) 89-10-039, in I.88-08-046, on rates, safety, and subhaul regulation for general freight transportation. Various parties filed applications for rehearing or petitions for modification of D.89-10-039. On February 7, 1990, the Commission issued D.90-02-021 which modified D.89-10-039 and, among other things, ordered further hearings to consider (1) revenue sharing between prime carriers and subhaulers, and (2) amending Commission rules and regulations on leasing between carriers to determine if the rules and regulations should be patterned more closely to those of the ICC.

D.90-02-021 also granted a limited rehearing to consider possible revisions to the adopted variable-cost floor price for common carriers.

The issues were considered in two separate phases. Phase I considered the issues of revenue sharing between subhaulers and prime carriers and possible amendment to Commission rules and regulations on leasing between carriers. Phase II considered revisions to the variable-cost floor price for common carriers. In addition to the two main issues, parties in Phase I were allowed to raise additional issues regarding subhauler protection.

This decision deals with Phase I issues. A separate decision will be issued in Phase II.

Hearings

Prehearing conferences (PHC) in both phases were held on April 2, 1990 to determine the parties, positions of parties, issues, and schedule. A new appearance list was developed at the PHC.

Hearings in Phase I were held in San Francisco before Administrative Law Judge (ALJ) Garde on June 18 through June 22, 1990. Phase I was submitted on August 10, 1990 upon receipt of reply briefs.

Division of Revenues Between Subhaulers and Prime Carriers

A subhauler (also known as independent contractor or underlying carrier) is an authorized carrier who renders service for a prime carrier (also known as principal or overlying carrier) for a specified payment.

D.89-10-039 (as modified by D.90-02-021) addresses various problems associated with the regulation of subhaulers. A significant issue regarding subhauling operations was concern about inadequate remuneration paid by prime carriers to subhaulers. The Commission concluded that subhaulers should be assured adequate protection for the conduct of their operations and ordered that:

"Additional hearings will be scheduled to consider possible rules on the division of revenues between prime carriers and subhaulers." (Ordering Paragraph 9, D.89-10-039.)

Positions of Parties

In his February 27, 1990 ruling, the ALJ directed parties not to address the need for rules on the division of revenues between prime carriers and subhaulers in Phase I. Notwithstanding the ruling, various parties in their testimony, did question the need for such rules. However, along with questioning the need for such rules, parties provided extensive testimony claiming that a reasonable formula for division of revenues between prime carriers and subhaulers cannot be developed for general freight transportation.

Appendix A contains a matrix showing each party's position regarding the rules for division of revenues between subhaulers and prime carriers. The position of parties opposing the concept of rules for division of revenues can be summarized as follows:

- The terms governing dealings between prime carriers and subhaulers are extremely varied. It would be impossible to develop a formula for division of revenues which would truly reflect the costs borne by the prime carriers and subhaulers in each of the many different transactions.

- If an unreasonable formula for division of revenues is adopted, prime carriers will simply stop using the services of subhaulers. Such a situation has occurred in bulk cement transportation where the Commission requires prime carriers to pay subhaulers 100% of the revenues received.

- The Commission has established a market-driven system for rates to be charged by prime carriers. Therefore, the rates to be paid to subhaulers should also be market driven, i.e., negotiated.

- Should the Commission choose to adopt a formula, a simple and flexible approach to set subhauler rates would be to require prime carriers to pay subhaulers a rate no less than the variable-cost floor established for common carriers. Under this proposal, any subhauler rate above the variable-cost floor will be negotiated between the subhauler and the prime carrier.

While the overwhelming majority of parties were opposed to Commission mandated rules for division of revenues between subhaulers and prime carriers, there were a few parties supporting the concept. Their position can be summarized as follows:

- The subhauler's share of revenues should be a percentage of the revenues received by the prime carrier.

- The formula should be flexible and the required payment for subhaulers should not be less than the variable-cost floor price.[1]

- The formula should be patterned after Transition Tariff 15 which contained rates and charges based on the type of equipment furnished, the length of time the vehicle was operated and mileage.

- Subhaulers should receive a fixed payment per mile plus a minimum hourly charge.

Of all parties supporting Commission mandated formula for division of revenues between prime carriers and subhaulers, only one proposed a specific formula. Other parties only proposed general guidelines for the division of revenues. The formula for division of revenues was proposed by Lou Filipovich.

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1 Similar to the proposal made by parties opposed to a formula for division of revenues.

Filipovich has extensive experience operating as a subhauler. Although he appeared on his own behalf, he is an ardent supporter of subhauler protection through Commission-mandated division of revenues. His formula is based on subhaulers' cost of providing service.

Filipovich proposes that subhaulers should receive $1.00 per mile plus 2 hours minimum at $50.00 per hour for local or short hauls, i.e., origin and destination round trip completed in one day. For long distance hauls, Filipovich proposes $1.00 per mile plus 3 hours minimum at $50.00 an hour. Examples of calculating subhauler's revenues for local and long distance hauling are shown below:

Local Shipment

Oakland to Sacramento		
90 miles @ 1.00 per mile	=	$ 90.00
2 hour minimum @ $50.00 per hour	=	$100.00
Total		$190.00

Long Distance Shipment

Sacramento or Bay Area to Los Angeles		
400 miles @ $1.00 per mile	=	$400.00
3 hour minimum	=	$150.00
Total		$550.00

According to Filipovich his proposal is based on this formula involving time and mileage:

$1.00 per mile x 50 miles = $50.00 = 1 hour

Filipovich's proposed charges are for the subhauler providing one truck driver and an all expense paid power unit for either truckload (TL) or less-than-truckload (LTL) shipments. Filipovich's mandatory payment for subhaulers would be the same regardless of the type of operating authority they have or the type of equipment they use to perform the subhaul.

As to the basis for selecting $1.00 per mile and 50 miles per hour, Filipovich claimed that he used common sense to develop these numbers.[2] As he explained during his cross-examination by Daniel McCarthy, counsel for the California Trucking Association.

> "Q But I'm just wondering how you arrive at this $1 per mile? You say that it's reasonable figure as opposed to a figure --
>
> "A Because you're only figuring unloaded [sic] [on loaded] miles. All this is on -- this formula to understand it only applies to that subhauler or that person if you want to send him on a trip lease only on a loaded mile.
>
> "Q Lou, did you base the buck on anything?
>
> "A Oh, yes.
>
> "Q What?
>
> "A Because you base the buck on common sense. If you use any other figure and you're going a hundred miles and you're going to haul something for a hundred miles, you can't do it for any less.
>
> "Q Okay. Common sense.
>
> "A Yes, common sense.
>
> "Q Now, going then to the 50 miles per hour, how did you arrive at a truck being able to drive 50 miles per hour?
>
> "A If you're going to work under the law, the way you're properly supposed to work, your log using the fact that you're -- that your formal travel that you go an hour and you drive 55 miles per hour is the average you're going to cover 50 miles and you remember that you're not

2 While his "seat of the pants" approach may appear strange to a sophisticated economist, it is typical of how many subhaulers estimate their cost and decide whether or not to transport a shipment.

going all across the Salt Lake desert. You got ups and downs, stops or whatever. So you use that as an average.

"Q Do you also have city driving?

"A It would be pretty much the same because then you have time involved in there.

What you have to remember about this formula, it doesn't need any cost justification because it has nothing to do with the shipper and the carrier relationship.

It only has to deal between the two carriers." (Tr., Vol. 60, 7866 and 7867.)

Discussion

The only thing certain about trucking of general freight is that there will be diversity. One need only watch the trucks going by on a stretch of freeway for a sample period to be convinced of the diversity. Therefore, it should not surprise anyone that the relationships between prime carriers and subhaulers are also extremely varied and complex. The diversity can be illustrated with the following examples.

A subhauler may have a responsible and long-term association with a prime carrier. He may act as the prime carrier's agent for pickup or delivery making him the prime carrier's principal contact with the customer. He may or may not own the trailers, but in either case performs maintenance on them when under his custody. This is a business association with important commitments made on each side. In such associations, the subhauler performs important administrative functions for the prime carrier.

On the other hand, a subhauler with a tractor may simply be available to transport a trailer on a very short notice, expecting the prime carrier to perform all overhead functions, including completing the shipment if his vehicle breaks down en route. In such business associations, the subhauler accepts none

of the prime carrier's overhead costs and places significant contingent costs upon the prime carrier.

These are just two examples illustrating diversity in the nature of relationships between prime carriers and subhaulers and the portion of costs borne by each for completing a shipment.[3] These illustrations do not take into account all factors that would further affect the division of revenue between subhaulers and prime carriers. Some of the factors that would have a significant bearing on the portion of total cost of transactions borne by prime carriers are:

a. Truck load (TL) and less than truck load (LTL) shipments

b. Ownership and/or type of trailing equipment used

c. Local distribution and line haul

When all these variables are considered, it is virtually impossible to develop a single formula which would provide a means for revenue sharing between subhaulers and prime carriers in proportion to the cost borne by each.

While it is not possible to develop a single formula for division of revenues, is it possible to adopt a set of formulae that would cover all possible relationships? We find that there are far too many different terms governing relationships between prime carriers and subhaulers. Any attempt to develop a set of formulae to cover every situation will result in an extensive document which would be impractical to use. Even if it were possible to generate such a document, no party has proposed such a set of formulae.

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3 A more comprehensive list of services performed by subhaulers in general freight operations are included in Appendix B.

Filipovich's Proposal

In contrast to the complexities of cost-related revenue sharing, Filipovich proposes a simple approach. His fixed dollar per mile and fixed hourly charge formula transcends all problems of diversities of subhauler/prime carrier relationships, TL vs. LTL shipments, type of trailing equipment used and other variations. However, simplicity is its only virtue.

If we were to adopt Filipovich's proposal, we would in fact be establishing a minimum rate for general freight transportation, at least where subhaulers are used. A prime carrier will have to charge at least a $1.00/mile plus hourly charge for each shipment in order to recover his payment to the subhauler.[4] This rate is considerably higher than the currently adopted variable-cost floor for common carriers.

Further, having established a market driven system for the rates to be charged by prime carriers, it would be unfair to require prime carriers to pay a fixed per mile charge to subhaulers. Accordingly, Filipovich's proposal will not be fair to prime carriers. In fact, it could be detrimental to subhaulers' existence if it caused prime carriers to simply stop using subhaulers.

In addition, Filipovich does not provide adequate justification for the costs he used in his formula. While we recognize his extensive experience in general freight transportation, we cannot adopt a number based solely on his intuition.

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4 There may be occasions when a prime carrier may charge an important customer less than its actual cost. However, if it does it too often, it will not remain in business.

Percentage Division of Revenues

Some parties propose that a subhauler of general freight receive a certain percentage of revenues received by the prime carrier. Although no party proposed a specific percent payment to subhaulers, we will examine the proposal in light of the two areas where the Commission does require such a division of revenues.

The Commission has established a percentage division of revenues between subhaulers and prime carriers for both bulk cement and dump truck transportation. In bulk cement transportation where the prime carriers are required to pay subhaulers 100% of the revenues received, there is virtually no subhauling performed. However, for dump truck transportation, the 95%/5% division of minimum rate revenues results in the use of many subhaulers.

It is important to examine the following differences between dump truck operations and general freight trucking operations:

1. In dump truck operations, loading and unloading is automated. The loading and unloading costs are a less significant (approximately 12%) portion of the total cost in dump trucking.

Typically, in general freight transportation, the services of laborers are required for the physical loading and unloading. Any of a number of different parties may perform loading and unloading of shipments. Either consignor, carrier employee, subhauler or consignee-receiver may load or unload a trailer. Costs of loading and unloading are a significant (approximately 46%) portion of the total cost.

2. In general, the origin and destination points are constant during a given dump truck job. Typically, loads are carried between a quarry and a job site, or between a construction site and a landfill. Providing service for a single job involves frequent moves between the same two points. Subhaulers therefore need little or no instruction from one day to the next on the origin and destination for loads.

Unlike dump trucking, an individual general freight hauler often travels between numerous origins and destinations. Distribution points and major shipments are spread throughout the state, and receivers of such shipments are in every town in every county. General freight service requires a much greater commitment of management resources to dispatching than does dump truck.

3. There seldom is a return load for dump truck moves. Typically, dump trucking involves moving raw material to batch plants or removing dirt from construction sites. Such moves rarely generate return loads from destination back to origin.

General freight subhaulers often rely on the prime carrier to secure a return load. This adds an extra layer of management expense (supervision, sales, rating, and billing) which the dump truck operation does not have.

4. The value of freight handled by dump trucks is, in most cases, low. Generally, dump truck loads are rock, sand, gravel, and the like. Many times these loads only have value if removed from a given site. However, even when they are being used (as at a cement plant) as a raw material, the value is still quite low. This means that all dump truck loads can be handled in the same general way. Carriers handling dump truck commodities need not take the precautions that they might if they were handling electronic components, for example.

General freight subhaulers usually work for many different prime carriers, and haul commodities of all different densities and values.

5. Equipment requirements in dump truck hauling do not generally change for the duration of any given job.

The equipment needs in general freight operations vary with the type of shipment. The range of equipment may include a flatbed trailer, a regular van, refrigerated van, and many other types of trailing equipment. This represents not only an added

supervision cost, but a differential in investment cost in trailing equipment if the prime carrier is providing it.

6. Dump truck transportation is covered by Commission-set minimum rates contained in MRTs 7A, 17A, and 20. The revenue between the shipper/customer and carrier is fully regulated by the Commission, which reviews in detail the reasonableness of all rates. The Commission established its 95% division for subhaulers based on a fully compensatory and reasonable minimum rate.

Prime carriers have wide latitude in setting rates for general freight transportation. With the discretion now available to general freight carriers, carriers will set some rates at levels which may not afford much profit margin.

These significant differences between dump truck and general freight operations make it impractical to apply the 95%/5% division of revenue formula adopted for dump trucks to general freight transportation.

In summary, we conclude that it is not feasible to develop rules for division of revenues between prime carriers and subhaulers of general freight which would be flexible, fair, and equitable in every subhauling situation.

Amendment to Commission Leasing Regulations

The second important issue addressed in Phase I of the further hearings dealt with possible amendments to the Commission's rules and regulations on leasing between carriers to pattern them more closely to those of the ICC. Further hearings on this issue were granted as a result of a recommendation made by John Fischer who represented several carriers. During further hearings, two witnesses, Fischer and Dirksen, provided testimony. They both make recommendations which have the same end result. They believe that the Commission should, in effect, adopt a new definition for interstate owner-operators or lessor-drivers.

First, we will consider the differences between the Commission's and ICC's rules on leasing. The Commission's rules and regulations on leasing between carriers and noncarriers are contained in General Order (GO) 130. (Commission rules and regulations dealing with subhauling are contained in GO 102.) The ICC's rules and regulations on leasing are set forth in the Code of Federal Regulation 49 Part 1057 (CFR 49-1057). A comparison of the salient features of the two regulations is shown in Table 1.

The proposals on leasing made by Fischer and Dirksen concern situations where an owner-operator or lessor-driver[5] is involved in mixed intrastate and interstate traffic. The proposals also apply to totally intrastate operations. The proposals address two major differences between the ICC and the Commission's regulations. First, the ICC leasing rules allow for both equipment and drivers to be leased whereas the Commission only allows for equipment to be leased between carriers. GO 130 requires that if the owner of the equipment to be leased is used as a driver, a bona fide employee/employer relationship between the lessee and lessor must be established. (GO 130, Part I.) If the owner of the

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5 For the purpose of this discussion only, the terms owner-operator and lessor-driver are used interchangeably.

The phrase "owner-operator" is generally used, in a non-technical way, to refer to an owner who operates his own vehicle. In California, owner-operators often work as independent-contractor subhaulers.

Public Utilities Code §3557 establishes and defines a classification of highway carriers known as "owner-operators". Section 3557 provides for the suspension of the operating authority of such "owner-operators" if the owner-operator's driving privilege is suspended or revoked. "Owner-operators" within the meaning of §3557 have Commission-issued operating authority. However, under Interstate Commerce Commission rules, drivers who own their own vehicles can work as independent contractors for a carrier without having their own operating authority; such drivers are sometimes called "owner-operators", in the nontechnical sense.

TABLE 1
ICC VERSUS PUC REGULATIONS
FOR LEASING AND SUBHAULING

PUC	ICC
Subhauling	
Prime carriers may only engage subhaul carriers with Commission-issued operating authority.	Subhauling is not a specified ICC transportation service.
Leasing Regulations	
Regulated in General Order 130.	Regulated in 49 Code of Federal Regulations Part 1057.
Leasing Between Carriers	
Provides for the leasing of of equipment. Driver must be a bona fide employee of lessor. GO 130, Part I.	Leasing of equipment and/or drivers allowed. Authority not required for lessor. 49 CFR 1057.22.
Leasing by Carrier to Non-Carrier	
GO 130, Part II, provides for the leasing of equipment which must be operated by lessee or the lessee's employees.	ICC rules allow authorized carrier to lease drivers and equipment. No time restriction on the lease. (Criteria set forth in Ex Parte MC-43 Sub 17.)
Leasing by Non-Carrier to Carrier	
GO 130, Part III, provides for the leasing of equipment from non-carriers to carriers. Driver statues not specified.	Permits the lease of equipment and drivers to authorized carriers. If shipper is lessor, lease must be for less than 30 days. Part 1057.42.
Interchange Agreements	
Interchange or through transportation is exempt from regulations contained in General Order 130.	Leasing regulations apply to interchange of equipment between authorized carriers for transportation regulated by ICC. Part 1057.31.
Terms of Lease or Agreement	
A written agreement or lease to be filed with the Commission within 5 days after execution.	Lease must be written prior to performance of transportation service. Part 1057.12(d).

equipment drives the vehicle and acts as an independent contractor, rather than an employee, the owner must have his or her own operating authority from the Commission; and the relationship is then a subhauler/prime carrier relationship, rather a lessor/lessee relationship. (See GO 102.)

Second, under ICC regulations, when a carrier leases from a noncarrier, the lessee's operating authority covers the transportation, thus not requiring separate operating authority for the lessor. Commission regulations allow leasing by noncarriers to carriers. (GO 130, Part III.) However, the regulations do not specify driver status. It is not stated if an employee of the noncarrier lessor can operate the leased vehicle or if the operator of the leased vehicle has to be a bona fide employee of the lessee. It is this ambiguity in GO 130 regarding the operator of a vehicle leased from a noncarrier on which Fischer and Dirksen base their proposal.

As to the specific proposals, Dirksen proposes an "ICC-like" system under which an owner-operator could lease his truck to another carrier and could lease himself as well to drive the truck. Fischer believes that the Commission should extend the definition of noncarriers in GO 130 to interstate owner-operators who do not possess California operating authority. This, according to Fischer, will allow the owner-operator to transport intrastate shipments under the lessee's operating authority. Both Dirksen and Fischer believe that no change need be made to GO 130 and that their proposals can be put into effect by the Commission by merely adopting a new interpretation for owner-operator leasing. For all practical purposes their proposals are similar. We will refer to their proposal as Fisher's proposal for convenience.

Turning to Fischer's proposal, it can be explained by the hypothetical situation of an owner-operator lessor carrying a shipment from Chicago to San Francisco. The owner-operator has no scheduled shipment from San Francisco to Chicago, but does have a

shipment waiting for him in Los Angeles to be transported to Chicago. He is offered an intrastate shipment, by a prime carrier with California operating authority, from San Francisco to Los Angeles. He cannot now transport that shipment lawfully under GOs 102 and 130, so he must forego that shipment and travel empty (or deadhead) to Los Angeles. According to Fischer, this is inefficient. Fischer believes that if GO 130 were interpreted to allow for an ICC type leasing requirement, the owner-operator would not need California operating authority and could transport the shipment under the prime carrier's authority.

Rather than requiring the Commission to adopt a new interpretation of GO 130, why does not Fischer simply ask the interstate owner-operator to obtain California operating authority? According to Fischer, in order to obtain California operating authority, an interstate owner-operator has to establish its domicile in California either by residing in the state or through a corporation. This requirement is expensive and difficult for small owner-operators to meet.

Fischer's proposal is opposed by CTA, Ad Hoc Carriers Committee, Cascade Drayage, RPM Transportation, Inc., S&S Transportation, U.S. Transport Services, Wallace Transport and California Teamsters.

We will analyze Fisher's proposal in light of the following three main contentions raised by its opponents:

1. Adoption of the leasing proposal would undermine carrier safety in California.

2. The leasing proposal would be unlawful if implemented.

3. Adoption of the leasing proposal would cause economic harm to carriers with California operating authority.

California Safety Program

In 1988, the California Legislature enacted Chapter 1586 of the Statutes of 1988. The new legislation instituted two safety programs for the trucking industry, the "pull notice" program and the Biennial Inspection of Terminals (BIT) program.

The pull notice program is administered by the Department of Motor Vehicles (DMV). Under the pull notice program, carriers are automatically provided, on a continuing basis, the driving records of all of their drivers. Any suspension or revocation of a driver's license is brought to a carrier's attention requiring it to stop using the driver's services. In addition, the DMV informs the Commission of the driver's license status of "owner-operators" as defined in Public Utilities (PU) Code §3557. The Commission takes steps to suspend the operating authority of such an "owner-operator" if the owner-operator's driving privilege is suspended or revoked.

The BIT program is enforced by the California Highway Patrol (CHP) through biennial terminal inspections of each carrier. These are commonly referred to as "BIT inspections." If a carrier's records indicate lack of required inspection or maintenance, or if the carrier has failed to participate in the pull notice program or failed to take necessary action based on the pull notices sent it, the CHP can "fail" the carrier. Pursuant to several code sections amended by Chapter 1216 of the Statutes of 1989 (see, e.g., PU Code §§1070.5 and 3774.5), the CHP can recommend that the Commission suspend the operating authority of highway carriers that fail to maintain their vehicles or to comply with the Vehicle Code or with regulations relative to motor carrier safety, if that failure is either a consistent failure or presents an imminent danger to public safety. The CHP can also recommend suspension for failure to comply with the pull notice program. If the CHP makes such a suspension recommendation in compliance with the statutory provisions, the Commission suspends the operating

authority of the highway carrier, pending a hearing if one is requested.

Under the BIT program, lessor-drivers could be excluded from the lessee-carrier's fleet for BIT inspections, unless the lessee-carrier assumes that responsibility. If the lessee-carrier does not assume the responsibility for the lessor-driver's vehicle, the lessor-driver is the carrier subject to BIT inspections, assuming the carrier has a California terminal. In instances where the lessee-carrier assumes responsibility for lessor-driver's vehicle, the failure of BIT inspection by the lessor-driver's vehicle is considered to be that of the lessee-carrier. Lessee-carriers do not generally accept this unrequired responsibility.

Let us consider Fischer's proposal in the context of BIT inspections. In the event that a lessee-carrier refuses to accept responsibility for BIT inspection of a vehicle it leases from a lessor-driver, Fischer's proposal would make the interstate lessor-driver, who is without California operating authority, responsible for BIT inspection of his vehicle. This procedure will have two serious safety implications. First, it may be difficult to find an out-of-state vehicle at its California terminal. Second, if the lessor-driver repeatedly fails the BIT inspection, the Commission on recommendation by the CHP will be unable to revoke the violator's operating authority because it has no authority. The second safety implication would also apply to an intrastate lessor-driver.

In addition to problems associated with BIT inspections, there would be problems with the pull notice program. Under PU Code §3557 the DMV informs the Commission of the driver's license status of "owner-operators" as defined in that section. The Commission takes steps to suspend the operating authority of such an "owner-operator" if the owner-operator's driving privilege is suspended or revoked. Under Fischer's proposal, these owner-operators would not have Commission operating authority that could

be revoked. Thus, the Commission would be deprived of an important safety-enforcement mechanism.

The second safety concern raised by Fischer's proposal relates to maintenance and insurance of equipment. According to GO 130, Part I (leasing between carriers), the responsibility for maintenance generally is borne by the lessee-carrier and cannot be delegated back to the owner-operator. An exception to this requirement can be made when the owner-operator does not operate the vehicle. If the lessee-carrier attempts to delegate responsibility for maintenance to the owner-operator, the owner-operator reverts to being a subhauler under GO 102, requiring operating authority from the Commission. On the other hand, under GO 130, Part III (leasing to carriers from noncarriers), either the lessor or the lessee can be responsible for maintenance. Thus, under Fischer's proposal, lessee-carriers could shift responsibility for maintenance to owner-operators, who would have no Commission operating authority. In short, it would be administratively difficult to ensure that every leased vehicle fully complies with maintenance requirements.

Under GO 130 lessee-carriers must maintain insurance on the leased vehicle. (See also GO 100.) Under Fischer's proposal it is not entirely clear that there would be adequate insurance coverage for the "leased" vehicles.

Based on the above we believe that allowing out-of-state owner-operators that come into this state to operate in intrastate commerce without California operating authority could pose significant safety problems for the traveling public as well as regulatory problems for the CHP, DMV, and the Commission.

Legal Issue Related to the Proposal

Under GO 130, Part I, an owner-operator who provides leased vehicles to regulated carriers and offers its services as a driver, must become an employee of the lessee carrier. If the owner-operator fails to become an employee, the putative lease

agreement fails and the owner-operator becomes a subhauler, i.e., a highway carrier which must have California authority to operate. Under GO 130, Part III, driver status is not specified when a regulated carrier leases from a noncarrier.

Fischer proposes that the definition of "noncarriers" be extended to include interstate owner-operators without California operating authority, thus allowing the owner-operator to engage in intrastate commerce under the lessee's operating authority.

Whatever merits Fischer's proposal might have, the definition of a noncarrier cannot be extended to an owner-operator who works as an independent contractor for another carrier because that would contravene the provisions of the Highway Carriers' Act. Under the Highway Carriers' Act, a "highway carrier" means "every corporation or person . . . engaged in transportation of property for compensation or hire as a business over any public highway in this state by means of a motor vehicle." (PU Code §3511.) A highway carrier must have operating authority from the Commission. (See, e.g., PU Code §§1063, 3515, 3541, and 3543.)

Under the foregoing provisions, a carrier does not have to provide transportation services directly to the public in order to be a highway carrier. To be a highway carrier, the carrier need only transport property for compensation or hire as a business. Accordingly, independent contractor subhaulers are highway carriers subject to Commission regulation. (See GO 102.)

Commission decisions have repeatedly come to this same conclusion. (See D.91247 (1980) 3 Cal.P.U.C.2d 142, 156; D.87152 (1977) 81 Cal.P.U.C. 421, 423-424; Morgan Drive Away, Inc., et al. (1971), D.78172, 71 Cal.P.U.C. 709, 712-713; ABC Messenger Service, Inc. et al., D.78171, (1971) 71 Cal.P.U.C. 694, 699; Re Establishment of Rules Governing the Leasing of Motor Vehicles, D.77072, (1970) 71 Cal.P.U.C. 31, 41-42; Re Practices by Motor Freight Carriers of Leasing of Vehicles & Subhauling, D.47663,

(1952) 52 Cal.P.U.C. 32, 35; Re Payments Made to Underlying Carriers, D.42647, (1949) 48 Cal.P.U.C. 576, 581.)

In Morgan Drive Away, supra, the Commission addressed a proposal similar to Fischer's. In that case, applicants sought deviations from the provisions of GO 130, believing that such deviations would exempt interstate owner-operators from the permit requirements of the Public Utilities Code when operating intrastate under lease agreements with carriers. In dismissing the application, the Commission pointed out that it did not have the authority to grant exceptions to the Highway Carriers' Act and that changing the leasing regulations under GO 130 would do nothing to help applicants avoid the statutory permit requirements. (71 Cal.P.U.C. at p. 712.)

In addition, the definition of a noncarrier cannot be extended to an owner-operator whose primary enterprise is to transport property. Such definition would be contrary to PU Code § 3549 which provides:

> "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." (PU Code §3549, emphasis added.)

Impact on Carriers with California Operating Authority

To appreciate the impact of Fischer's proposal on carriers with California operating authority, we must revisit our hypothetical situation of an owner-operator transporting a shipment from Chicago to San Francisco. The owner-operator has no shipment scheduled from San Francisco to Chicago, but does have a shipment

scheduled from Los Angeles to Chicago. He is offered an intrastate shipment to Los Angeles at a rate that will at least cover his fuel cost. He cannot now take the shipment lawfully under GO 130, so he must forego the load and deadhead to Los Angeles. If Fischer's proposal is adopted, the owner-operator can transport the shipment.

Take this hypothetical situation a step further. Joining the interstate owner-operator with an available empty truck in San Francisco is an intrastate carrier with California operating authority. He also has to return to Los Angeles. There is only one shipment available. The intrastate carrier will either have to accept the low rate offered to the interstate owner-operator or operate inefficiently and deadhead to Los Angeles.

In summary, in light of the above discussion, we must conclude that the disadvantages of adopting Fischer's proposal far outweigh the small gains of efficiency and ease of operation in mixed intrastate and interstate shipments. In fact, under the current law such a proposal cannot be adopted. Accordingly, we will not modify the Commission's rules and regulation on leasing.

Other Issues

Other than the two main issues, parties were allowed to raise additional issues related to subhauler protection in Phase I. Accordingly, certain parties have proposed methods of providing additional protection for subhaulers.

A majority of the proposals suggest modifications to the rules governing the required bond that prime carriers, which engage subhaulers, have to file with the Commission. The rules governing bonding requirements are included in GO 102-H. Almost all other proposals regarding subhauler protection also suggest modification to rules in GO 102-H.

However, D.90-02-021 ordered the Transportation Division to: "Issue a report within 180 days from the effective date of

this decision addressing possible changes to subhauler bonding requirements for prime carriers." (Ordering Paragraph 7, D.90-02-021.)

The report on bonding requirements was issued on August 6, 1990. We believe that any modifications to GO 102-H should be deferred until parties have had an opportunity to review the report and to file comments on it. Accordingly, this proceeding will remain open to consider possible modifications to GO 102-H in Phase III.

Turning to the schedule for Phase III, we will allow parties until December 15, 1990 to file their comments on the report on bonding requirements. After reviewing the comments, the ALJ will issue a ruling setting further hearings to consider modifications to GO 102-H. The ruling will outline the scope of modifications to GO 102-H and any other issues to be considered in Phase III.

Comments on ALJ's Proposed Decision

The ALJ's proposed decision was filed and mailed to the parties on September 21, 1990. The California Trucking Association, the California Manufacturers Association, the Division of Ratepayer Advocates, and Filipovich filed comments on the proposed decision. The California Trucking Association and the Division of Ratepayer Advocates also filed reply comments. After reviewing the comments, we have corrected certain errors and omissions. Other than correcting the errors and omissions, the decision is being issued essentially as proposed.

Findings of Fact

1. On August 24, 1988, the Commission instituted an investigation, I.88-08-046, into the regulation of general freight transportation by truck.

2. The Commission issued D.89-10-039 in I.88-08-046.

3. On February 7, 1990, the Commission issued D.90-02-021 which modified D.89-10-039 and, among other things, ordered further

hearings to consider (1) revenue sharing between prime carriers and subhaulers, and (2) amending Commission rules and regulations on leasing between carriers to determine if the rules and regulations should be patterned more closely to those of the ICC.

4. D.90-02-021 also granted a limited rehearing to consider possible revisions to the adopted variable-cost floor price for common carriers.

5. The issues were considered in two separate phases.

6. Phase I considered the issues of revenue sharing between subhaulers and prime carriers and possible amendment to Commission rules and regulations on leasing between carriers.

7. Phase II considered revisions to the variable-cost floor price for common carriers.

8. In Phase I, parties were allowed to raise additional issues regarding subhauler protection.

9. This decision discusses Phase I issues.

10. The relationship between prime carriers and subhaulers are extremely varied and complex.

11. The portions of the total cost of any transaction borne by prime carriers and subhaulers vary with the type of transaction.

12. It is not possible to develop a single formula which would provide a means for revenue sharing between subhaulers and prime carriers in proportion to the cost borne by each.

13. No party has proposed a set of formulae that cover all possible situations of subhauling.

14. Filipovich proposes a fixed formula for revenue sharing which is based on subhaulers' costs.

15. Filipovich proposes that a subhauler should be paid $1.00 per mile plus an hourly charge regardless of the type of haul, i.e., TL or LTL.

16. Filipovich's proposed payment to the subhaulers is considerably higher than the currently adopted variable-cost floor price.

17. Filipovich does not provide any justification for his proposed charges.

18. In dump truck transportation, the Commission has mandated 95%/5% revenue division between prime carriers and subhaulers.

19. Typically, the ratio of costs borne by prime carriers and subhaulers does not vary significantly in dump truck transportation.

20. There are other significant differences of characteristics between general freight transportation and dump truck transportation.

21. The Commission has set minimum rates for dump truck operations.

22. Rates charged in general freight operations are market driven.

23. ICC leasing rules allow both equipment and driver to be leased between carriers.

24. Commission rules on leasing only allow for equipment to be leased between carriers.

25. Under ICC regulations, when a carrier leases from a noncarrier, transportation by the lessor is performed under the lessee's authority, thus not requiring separate operating authority for the lessor.

26. Commission's rules allow leasing by noncarriers to carriers.

27. Commission's rules do not specify driver status of leased vehicles from noncarriers.

28. Fischer proposes that for mixed interstate and intrastate transportation, an interstate owner-operator should be considered a noncarrier, thus allowing it to engage in intrastate transportation under the operating authority of a California-authorized lessee-carrier.

29. Fischer's proposal would be detrimental to California's truck safety program.

30. Fischer's proposal, if adopted, would undermine the financial well being of intrastate carriers with California operating authority.

31. Various parties propose modifications to rules on subhauling contained in GO 102-H including rules on bonding requirements.

32. D.90-02-021 ordered the Transportation Division to publish a report addressing possible changes to subhauler bonding requirements.

33. The Transportation Division issued the report on bonding requirements on August 6, 1990.

34. Any modifications to GO 102-H would be more effective if they incorporate comments by parties on the report on bonding requirements.

Conclusions of Law

1. Adoption of rules for Commission-mandated division of revenues between prime carriers and subhaulers is not feasible.

2. Fischer's proposal to allow interstate owner-operators to engage in intrastate transportation under the operating authority of a California lessee-carrier should not be adopted.

3. Parties should be allowed adequate time to comment on the report on bonding requirements.

4. This proceeding should remain open to consider possible modifications to GO 102-H.

5. Under current law, a definition of a noncarrier cannot be applied to an owner-operator who works as an independent contractor for another carrier nor to an owner-operator whose primary enterprise is to transport property.

SECOND INTERIM ORDER

IT IS ORDERED that:

1. On or before January 20, 1991, parties may file comments with the Director of the Transportation Division on the report addressing possible changes to subhauler bonding requirements issued by the Transportation Division. A copy of the comments should also be sent to the assigned administrative law judge.

2. This proceeding shall remain open to consider possible modifications to General Order (GO) 102-H.

3. The assigned administrative law judge shall issue a ruling setting further hearings. The ruling shall delineate the scope of modifications to GO 102-H and identify any other issues to be considered during the hearings.

This order becomes effective 30 days from today.

Dated November 21, 1990, at San Francisco, California.

G. MITCHELL WILK
President
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

Commissioner Frederick R. Duda, being necessarily absent, did not participate.

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

NEAL J. SHULMAN, Executive Director

SUBHAUL PHASE I

POSITIONS OF THE PARTIES

PARTY	DIVISION OF REVENUE	BONDING REQUIREMENTS	LEASING REQUIREMENTS	OTHER ISSUES
AD HOC CARRIERS COMMITTEE EX I-2	NO, TOO DIVERSE, AMOUNTS TO MINIMUM RATE; QUESTIONABLE LEGALITY, IF ADOPTED, USE VCF		AGAINST ICC METHOD WHICH ALLOWS LEASING OF UNREGULATED CARRIERS	
FOLGER ATHEARN, JR. EX I-3	PATTERN AFTER MRT 15 VEHICLE UNIT RATES WHICH REFLECT COSTS			
LARRY P. BOLAND EX I-19	NO, TOO COMPLEX, NO EVIDENCE OF NEED FOR DIVISION			
CAL CARTAGE EX I-4	NO, ONE FORMULA CANNOT REFLECT VARIABLES, WOULD INCREASE COSTS			
CALIFORNIA COALITION FOR TRUCKING DEREGULATION EX I-5	NO, MARKET IS TOO COMPLEX, PUC SHOULD ENFORCE AGREEMENTS, IF SET, USE % OF REVENUE	STIFFER REQUIREMENTS, SIX MONTH CLAIM PERIOD		RECOMMENDS SETTING CONTRACTS PRIOR TO SERVICE
CALIFORNIA GRAIN AND FEED ASSOC. EX I-6	NO, LET MARKET SET, HARD TO ENFORCE, FEARS GF WILL SPILL OVER INTO OTHER AREAS			
CALIFORNIA LEAGUE OF FOOD PROCESSORS EX I-7	NO, LET MARKET SET, FEARS IT WILL LEAD TO DIVISION OF REVENUE IN OTHER SECTORS			
CALIFORNIA MANUFACTURERS ASSOCIATION EX I-8	FORMULA SHOULD BE FLEXIBLE, NOT LESS THAN VCF	EXTEND CLAIM PERIOD, ALLOW SELF INSURANCE, PUC SHOULD ADJUDICATE		
CAL PAK DELIVERY EX I-9	PAY %, WANTS TO BE EXEMPT FROM MANDATED DIVISION			
CALIFORNIA TRUCKING ASSOCIATION EX I-24	NO, IF REVENUE IS ABOVE 70% SH THEY ARE BROKERS AND SHOULD PAY 100%	SHOULD BE AMENDED TO ENSURE FINANCIAL FITNESS		
CASCADE DRAYAGE EX I-25	NO, ONE FORM WILL NOT WORK		OPPOSES ICC RULES FOR SAFETY REASONS, FEELS OUT OF STATE CARRIERS WOULD CUT RATES	ALLOW FIELD OFFICES TO ISSUE AUTHORITY
CERTIFIED FREIGHT LINES EX I-26	NO, IF MARKET IS SETTING RATES FOR PRIME IT SHOULD SET RATES FOR SH			
C.O.M., INC. EX I-10	NO, LET MARKET SET FOR SH AS WELL AS PRIME	BOND SHOULD BE 1/2 ANNUAL REVENUE TO SH, DO NOT SHORTEN PAYMENT PERIOD		

POSITIONS OF THE PARTIES

PARTY	DIVISION OF REVENUE	BONDING REQUIREMENTS	LEASING REQUIREMENTS	OTHER ISSUES
MIKE CONROTTO TRUCKING EX I-15	NO MANDATED DIVISION, IF SET, SHOULD BE VCF AND NEGOTIATE THE REST			
JOE COSTA TRUCKING EX I-27	NO DIVISION, WOULD RESULT IN LESS SERVICE TO RURAL COMMUNITIES			
CRESCENT TRUCK LINES EX I-28	PRIMES AND SH SHOULD BE ALLOWED TO NEGOTIATE			
DIVISION OF RATEPAYER ADVOCATES EX I-1	IF SET, CONSIDER USING OVERHEAD OF PRIME		IF ICC RULES ARE ADOPTED G.O. 130 MUST BE AMENDED	
DIRKSEN TRANSPORTATION EX I-11	NO, TOO DIVERSE, ALLOW NEGOTIATION, SET DIVISION COULD RUIN SH		ADOPT ICC RULES, NO DUPLICATE INSURANCE, NO AUTHORITY NECESSARY FOR O/O WHO JUST SH	
DIVISION TRUCKING EX I-12	NO, ONE FORMULA NOT POSSIBLE, SH SHOULD PROVE ABUSE			
J FILIPOVICH EX I-13	YES, SH SHOULD GET $1 PER MILE + 2 HR MIN $50/HR LOCAL HAULS, 3HR MIN FOR LONG HAULS			RECIPROCAL USE OF NAMES ON INSURANCE POLICIES
GAN-TRANS LTD EX I-29	FLAT RATE NOT %, ENSURES ALL LOADS GET TREATED AS LINE HAULS			
GREAT AMERICAN TRANSPORT EX I-14	USE FLAT RATE NOT % UNLESS SOME PORTION OF OVERHEAD IS EXEMPT	CHANGE IS NECESSARY PUC SHOULD ADMINISTER BINDING WRITTEN CONTRACTS		PUC SHOULD HAVE SEPARATE BRANCH TO ENFORCE RULES
INDUSTRIAL FREIGHT SYSTEM EX I-30	NO, INDUSTRY CURRENTLY USES BEST METHODS FOR INDEPENDENT OPERATOR			
P KOOYMAN TRUCKING EX I-31	NO, FREE ENTERPRISE SYSTEM SHOULD BE ALLOWED TO OPERATE			
PACIFIC MOTOR TARIFF BUREAU EX I-16	NO, NO NEED IF SET USE VCF	INCREASE BOND AMOUNT, ENFORCE CURRENT REGULATIONS		
QUALITY TRANSPORT INC. EX I-18	IF SETTING RATE FOR SH IT SHOULD BE NO LOWER THAN VCF, NO FLOOR FOR SH ENGAGED BY CONTRACT CARRIER			

POSITIONS OF THE PARTIES

PARTY	DIVISION OF REVENUE	BONDING REQUIREMENTS	LEASING REQUIREMENTS	OTHER ISSUES
RFM TRANSPORTATION EX I-17	NO, IMPOSSIBLE, PUC SHOULD NOT INTERFERE W/ PRIME SH RELATIONSHIP, EXEMPT ICC AND PRIMES W/ OVER 50% ICC SH		PAYS ICC AND PUC AT THE SAME LEVEL	
S & S TRANSPORTATION EX I-33	NO		PUC SHOULD RETAIN CONTROL OF SH BY REQUIRING AUTHORITY, OPPOSES ICC LEASING RULES	
SHIFFLET BROTHERS EX I-32	NO, ALLOW ABILITY TO NEGOTIATE RATES, BROKERS ARE THE ABUSERS			
TERESI TRUCKING EX I-44	NO, RECOMMENDS SH PUBLISH THEIR OWN RATES		AGAINST ICC METHOD	
TONY'S EXPRESS EX I-34	NO, TOO DIVERSE CHANGING RELATIONSHIP WILL ONLY CREATE PROBLEMS	IF PUC REGULATES SH/PRIME SHOULD ALSO RAISE BONDING LEVEL		
TRUCKING UNLIMITED EX I-20	NO, ALLOW MARKETPLACE CONCEPT TO WORK IN SUBHAULING	BOND AMOUNT SHOULD DEPEND ON REVENUE, ALLOW SELF INSURANCE, TIME PERIOD OK		
U.S. TRANSPORT EX I-21	NO, TOO DIVERSE IF SET USE VCF	ENFORCE EXISTING RULES IN GO 102-R	OIR IF CHANGES ARE CONSIDERED TO G.O. 130	PUC SHOULD ACTIVELY INVESTIGATE SH PROBLEMS BY VISITING PRIMES
WALLACE TRANSPORT EX I-35	NO, ALLOW FREE MARKET TO OPERATE, DON'T REGULATE ONE SECTOR OF AN UNREGULATED MARKET		OPPOSES ICC RULES AS ALLOWING UNSAFE CARRIERS TO OPERATE WITHOUT AUTHORITY	SH SHOULD GET SEPARATE AUTHORITY GRANTED FROM FIELD OFFICES
JIM WALUND TRUCKING EX I-36	NO, NOT NEEDED, ALLOW PARTIES TO NEGOTIATE			
WILLIG FREIGHT LINES EX I-22	NO, TOO DIVERSE ESPECIALLY LTL WHICH SHOULD BE EXEMPT			
YUBA TRUCKING EX I-23	NO, WON'T WORK WITH CURRENT REGULATORY PROGRAM, POSES ENFORCEMENT PROBLEMS			

ABBREVIATIONS

GF - GENERAL FREIGHT
G.O. - GENERAL ORDER
LTL - LESS-THAN-TRUCKLOAD
OIR - ORDER INSTITUTING RULEMAKING
O/O - OWNER OPERATOR
SH - SUBHAULER
VCF - VARIABLE COST FLOOR

(END OF APPENDIX A)

APPENDIX B
Page 1

EXAMPLES OF GENERAL FREIGHT SUBHAULING

The following are a very limited number of examples of general freight hauling which is performed by prime carriers using subhaulers under its rates and/or regulations of the California Commission. This only a partial listing for the number of such operations are virtually unlimited. However, they should graphically demonstrate why this Commission in the 1980 Case 10247 and Decision 91247 decided not to attempt to establish or regulate the minimum rates or compensation that is paid subhaulers by prime carriers and wisely left this matter for the private parties to negotiate. (Prime carriers will be referred to hereafter as "PC", subhaulers as "S", less-than-truckload as "LTL and truckload as "TL.")

(1) LTL shipments are picked up in the Los Angeles area by the PC, routed through the PC's terminal, linehauled by the PC to its Sacramento terminal, where shipments are distributed locally with PC units and the remainder are tendered to S for delivery to such points as Grass Valley, Placerville and Jackson.

(2) The reverse of (1) with S picking up shipments at Grass Valley, Placerville and Jackson which are tendered to PC at Sacramento and transported by PC personnel and equipment to the Los Angeles area where they are distributed by PC.

(3) Same movements as (1) and (2) except the linehaul transportation is performed by S.

(4) All major California tariff bureaus publish and file with the PUC hourly, weekly, monthly and yearly rates for the rental of trucks, tractors and trailers of a variety of types. PCs use S for these services with some S providing and others not providing trailers.

(5) A TL movement is transported by S from Marysville to San Diego where the trailer is dropped or delivered to the PC terminal where it is held until receiver wants the load delivered which is performed by the PC driver and equipment. (Price Club, Home Club, Cosco, chain grocers and others will delay receiving these shipments for as long as 7 days.)

(6) PC stations a "hostler" (a PC employee with a yard tractor that loads trailers at the warehouse or distribution center of large shippers and when the trailers are loaded will move them from the loading docks to parking areas where they are to be tendered to S "puller" (a S which furnishes only a tractor) to be transported to destination. A variation of such a movement is when S provides the full tractor and trailer unit.

(7) A 35,000-pound TL shipment, consisting of approximately 950 cases of canned goods, which must be hand-loaded at origin and

hand-unloaded at destination. S provides the transportation and PC's lumper or helper does the loading and unloading each of which requires as long as four hours to perform.

(8) A 35,000-pound TL shipment of wallboard is transported from Richmond to Red Bluff by S. A typical wallboard movement requires that it be accompanied by a high lift truck to unload and stack these materials. The lift trucks are provided by PC and at times by S.

(9) To take advantage of a high volume rate a shipper will combine three TL movements into a single 120,000-pound shipment. Three S are used for these loads but two 40,000 pound movements are transported directly to two destinations and the third load consists of ten drop shipments or split deliveries along Interstate 5 between Bakersfield and Redding.

(10) A 30,000-pound load of flour is transported from Oakland to Fresno in a tractor and trailer equipped, at a substantial cost, to pneumatically load and unload the lading. The full unit may be provided by the S or the pneumatic trailer may be furnished by the PUC.

(11) A TL shipment is transported by S from Sacramento to Santa Rosa but must return empty to Sacramento because he is not provided a backhaul. The same outbound movement to Santa Rosa performed by S but the PC guarantees S a backhaul from the Santa Rosa-Napa area to Sacramento.

(12) The Commission's "Commodities and Geographic Areas Exempt from Rate Regulation" (at page 2) requires PC to publish rates for the transportation of exempt traffic if they desire to carry such shipments. PC utilize S for the transportation of such commodities including but not limited to race horses, automobiles, furniture, hay, common lime, newspaper, nuts, live poultry, sea shells, sheep camp outfits, trailer coaches, wood residual, commodities of abnormal size and weight requiring special low bed trailers, commodities transported by couriers, and hundreds of other commodities as well as areas included therein.

(13) PC uses S to transport a 125,000-pound backhoe on the S's double goose-neck, double-drop, low bed trailer unit. The same movement but PC furnishes the trailer.

(14) S, who operates a single tractor-trailer unit, transports a truckload movement from Pittsburg to Fontana. The same movement except the S used normally operates as a PC with its fleet of over 200 units of equipment.

(15) PC uses S for the transportation of the following general freight commodities: fresh and green fruits and vegetables from harvest fields to packing plants and canneries or to market;

hay, grain and fodder; and TL's of cement in bags.

(16) Shipments transported by S which are subject to charges for the following services: COD, higher than declared values, storage-in-transit and reloading, temperature controls, advertising on equipment, permit movements, demurrage services, pipe stringing, empty containers returning, escort services, etc.

(END OF APPENDIX B)