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Decision 92-04-052 April 22, 1992

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ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Investigation)
On the Commission's Own Motion)
to Adopt and Issue a General)
Order to Govern the Requirements)
and Procedures Regarding Safety)
and Practices for Highway)
Carriers and Household Goods)
Carriers.)

I.90-12-006
(Filed December 6, 1990)

(See Appendix A for List of Appearances.)

O P I N I O N

On December 6, 1990, we issued Investigation (I.) 90-12-006 to determine whether the Commission should extend Public Utilities (PU) Code Sections¹ 1063.5 and 3553 or similar requirements to existing highway carriers and all household goods carriers.

Sections 1063.5 and 3553 require applicants to make certain safety-related showings before the Commission issues highway carrier operating authority or transfers existing authority. Section 1063.5 applies to highway common carriers and cement carriers, whereas section 3553 applies to highway permit carriers. Both statutes require near identical showings by new applicants or transferees.²

At the time we instituted this investigation we noted that the statutory scheme did not extend to existing carriers who were engaged in identical operations. Expressing the view that "[s]afety to the public is a matter of great concern to us," we declared an intention to determine whether to extend these recent statutory requirements to existing highway carriers and household goods carriers.³ Now that the evidence is before us,⁴ we have

¹ All references to Code sections are to the California Public Utilities Code unless otherwise indicated.

² Both Code provisions were added by Chapter 1175 of the Statutes of 1988.

³ D.90-12-091 and D.91-04-030 extended PU Code Section 3553 entry requirements to household goods carriers.

⁴ The Commission named and served all highway carriers and household goods carriers as respondents to the proceeding.

(continued...)

concluded that the public safety warrants the extension of the statutory program to existing highway carriers and household goods carriers. Accordingly, we adopt as our General Order (G.O.) a revised version of a proposal by our Transportation Division.⁵

Discussion

There are two major issues in this proceeding. First, does the Commission have the authority to regulate carriers in the manner prescribed by the proposed G.O.? Second, if so, is it in the public interest to issue the proposed G.O.?

An understanding of the issues before us is facilitated by a brief review of the state's regulatory framework and the respective roles of the Commission and the California Highway Patrol (CHP). While both agencies are concerned with the safety of carriers, the CHP focuses primarily on the mechanical condition of vehicles, although it does inspect pull notice records and driver logs. By contrast, the Commission ensures safety by focusing primarily on the way carriers do business. As an illustration, § 1063.5, requires that a carrier demonstrate to the satisfaction of the Commission its financial responsibility, commitment to observing rules regarding hours of service, and the existence of various preventative maintenance, education, and safety programs. Viewed in this context, the proposed G.O. is an extension of our historical role.

1. Authority

Our authority to extend the safety promoting scheme envisioned by the recent legislation to existing carriers has been denied on several grounds by certain of the respondents. At

⁴(...continued)
Administrative Law Judge (ALJ) O'Leary held public hearings in July and September 1991 in San Francisco and Los Angeles.

⁵ Attached as Appendix B is Transportation Division's proposed General Order as amended by the revisions we adopt today.

the outset we encounter an assertion that § 768 preempts the Commission from issuing a G.O. related to safety. We reject this view. As amended in 1984 and 1986, § 768 states that the California Highway Patrol have "the primary responsibility for the regulation of the safety of operation" of highway common carriers and other motor carriers. The plain meaning of this statutory language is to ensure the primacy of the CHP. Far from ousting the Commission of jurisdiction or relieving it of responsibility, the statute imposes upon us a duty of active cooperation in the joint effort to ensure the safe operation of highway carriers. Under our reading the issue is then narrowed to an inquiry as to whether the terms of the proposed G.O. impinge upon the primary jurisdiction of the CHP. They do not. The proposed G.O. neither displaces substantive regulations issued by the CHP nor attempts to have Commission staff perform the physical vehicle inspections now undertaken by the CHP. Its terms are complementary to the efforts of the CHP and thus comport with our statutory responsibilities of cooperation and support.

Other respondents have contended that the very terms of §§ 1063.5 and 3553 reveal an intention on the part of the Legislature that the Commission be without power to extend those or similar requirements to existing carriers. Nothing in the terms of the 1988 legislation expresses any such intent, nor have we been cited to any legislative history from which such an intention might be gleaned. Such absence of legislative intent is not surprising given the content of both recent and ancient provisions of the PU Code.

Section 701, which dates from legislation first enacted in 1911, stipulates that the Commission may "...do all things, whether specifically designated [the Public Utilities Act] or in addition thereto, which are necessary and convenient in the

exercise of such power and jurisdiction." In an early case dealing with the transportation matrix, the Supreme Court clearly recognized that the police power over public utilities has been committed to the Commission. (Sutter Butte Canal Company Co. v. Railroad Commission, 202 Cal. 179, 184, 259 Pac. 937, aff'd. 279 U.S. 125 (1927).) In section 1062 the Legislature addressed the regulatory authority of the Commission with respect to common carriers and certain other highway users. That legislation provides *inter alia* that the Commission may:

- (a) Supervise and regulate every highway common carrier and cement carrier in this state.
- (b) Fix...classifications, and rules of each of these carriers.
- (c) . . .
- (d) Supervise and regulate these carriers in all other matters affecting the relationship between them and the shipping public.⁶

With respect to carriers of household goods, § 5139 provides that the Commission "...may establish rules for the performance of any service of the character furnished or supplied by household goods carriers. Every household goods carrier shall observe such rules. Failure to do so is unlawful."

These legislative enactments reflect decades of enunciated public policy in this State. Seen in this context, we are not surprised by the absence of any manifestation of legislative intent to prohibit the Commission from applying safety promoting provisions to those carriers who are not directly covered by §§ 1063.5 and 3553 but who pose indistinguishable danger to the public.

⁶ The sweeping character and Constitutional foundation of this delegation of regulatory authority to the Commission has been recognized in People v. Cote, 146 Cal. App. 2d Supp. 892, 894, 305 P. 2d 278 (1956).

2. Public Interest

As we have previously stated, public safety is a matter of great concern to the Commission. Today we reaffirm that commitment. Yet there remains to be resolved a question as to whether the proposed G.O. is the best approach to protect the public interest in highway safety.

To make this determination, we must consider the burden of regulation imposed on carriers against the benefits to be gained from it. In this instance we find compelling testimony in the record that the proposed G.O. will address arrest trends and correct conditions which threaten the safety of those who use our highways. Driver violations continue to increase and now account for nearly 94% of all truck at-fault fatal and injury accidents. Speed, unsafe lane changes, right of way violations, unsafe turns, and following too close account for nearly 80% of those accidents. Truck driver problems are particularly evident in the 20 to 29 year old entry level age group. Commercial drivers in this age group account for a disproportionate share of fatal and injury at-fault accidents even though their number is shrinking. In 1989 they represented 17% of California commercial drivers, down from 25.7% in 1982, yet they accounted for over 31% of the at-fault accidents. Given this record we find that a serious need exists to promote safety by ensuring that proper training and education of drivers occurs. The attached G.O. attempts to accomplish this in addition to addressing other obvious safety concerns.

The record we have cited reveals no distinction among carriers based on the date of issuance of certificates or permits. Rather the safety concerns are common to both old and new carriers. We are unable to discern why carriers that obtained their authority beginning in early 1989 should be required to maintain driver education programs while carriers who

obtained prior authority are exempt. Nor do we find that public safety is promoted by exempting one class of carriers from an obligation to regularly check the driving records of their subhauler drivers while imposing such a requirement on new entrants. The record is devoid of any evidence establishing that older carrier pose a lesser incidence of safety problems of the kind that these requirements are intended to correct. Accordingly, we conclude that adopting the attached G.O. is in the public interest.

A final objection to the issuance of the G.O. is found in the claim that it will result in duplicative and redundant safety regulation by the Commission. We disagree and begin by noting that nothing in our G.O. enhances or enlarges the type of safety regulation beyond that already mandated for new entrants or the transferees of older carrier permits. What is intended and will result is the application of these existing requirements to a previously uncovered class of carriers. The hearing record demonstrates that this objective is well understood by the CHP. In his written prepared testimony, the CHP witness stated:

" We understand the purpose of the proposed G.O. is to expand the scope of the PUC's 'evaluations' to every carrier class regulated by the PUC, rather than the few categories now included. We agree that the proposed G.O. has merit relative to carrier safety, and we support it, provided (1) that it is in no manner construed or interpreted to require the CHP to conduct additional inspections of PUC carriers...and (2) that it does not result in a duplication of this Department's inspection and enforcement efforts." (Emphasis added.)

We are in accord with this interpretation. It is directly supportive of our conclusion that the G.O. represents the type of cooperation with the CHP mandated by § 768. Our G.O. will require carriers to make certain safety-related showing before

the Commission not the CHP. Rather than duplicate the CHP's efforts or responsibilities, the Order will complement the goals embraced by both agencies. Nothing in the Order modifies or seeks to interpret regulations promulgated by the CHP.⁷

In a shift of focus, several parties challenged the safety education requirements of the Proposed General Order. They contend that they are duplicative of Cal OSHA requirements. However, as pointed out by the Transportation Division in its reply brief, the focus of Cal OSHA regulations is to prevent employee injury. By contrast, the proposed G.O. is targeted to educational programs designed to protect the general public, users of the highways rather than employees of commercial operators.

3. Revisions To The Proposed General Order

We have made several revisions to the G.O. to clarify the scope of prime carrier responsibility with respect to subhaulers.⁸ The revision to Rule 6.2 was proposed by the California Dump Truck Owners Association (CDTOA) and supported by Transportation Division staff. The other changes respond to criticisms that the originally proposed language was impractical, overly broad, or unclear. Specifically, we have changed the

⁷ The CHP enforces carrier safety through a Biennial Inspection of Terminals (BIT) Program. Under the BIT program, the CHP inspects carriers for compliance every 25 months. Under the terms of our Order the Commission staff will check for compliance on a periodic basis. The CHP witness stated that such activity will "enhance highway safety [because] it moves that carrier up for inspection on an earlier basis than it would otherwise." Such a function by the Commission plays an important role given the testimony that it is a physical impossibility for the CHP to reach every carrier in the state annually. Further, the witness noted that sometimes the Commission identifies unsafe carriers in the BIT program.

⁸ We decline to further limit the responsibility of prime carriers for the subhaulers that they use, as suggested by some parties, such as CDTOA. To do so would permit carriers to evade responsibility for the safety of their operations by using subhaulers.

language in Rule 7.5 to make it consistent with the language contained in Rule 4.4 and Rule 6.2 (as revised). We have also made changes to Rules 7.4, 9.1 and 9.2 to clarify highway carrier responsibility for vehicles.

We are also revising Proposed Rule 7.4 to eliminate, for now, coverage of vehicles not subject to CHP regulations (light vehicles). It does not appear that such vehicles are currently covered by our entry program for new carriers. Accordingly, we would need a stronger record before we could extend the requirements of Rule 7 to light vehicles.

In its opening brief, the Transportation Division proposed that language be added to Rule 7 to parallel the language of PU Code Sections 586 and 3552. Those sections require specific maintenance records but provide that compliance with the Regulations of Title 13 of the California Code of Regulations is sufficient. Since the focus of Rule 7 is to require compliance with Title 13, we see no reason to restate the specific requirements of the PU Code sections, which are superseded by compliance with the Title 13 regulations. We will therefore not adopt the Division's proposal.

Findings of Fact

1. The Transportation Division Staff has proposed a G.O. extending certain requirements contained in Sections 1063.5 and 3553 (applicable to new and transferee carriers) to existing highway carriers and all household goods carriers.

2. Safety to the public is a matter of great concern to the Commission.

3. The attached G.O. does not displace CHP substantive regulations nor attempt to have Commission staff perform the physical inspections now performed by the CHP.

4. The attached G.O. complements the efforts of the CHP.

5. A serious need exists to promote public safety by

ensuring that proper education and training of drivers occurs.

6. Given the presence of an indistinguishable threat to public safety, it makes little sense to exempt older carriers from ongoing safety programs required of their transferees and new entrants.

Conclusions of Law

1. The attached G.O. does not conflict with CHP regulations.

2. Neither Public Utilities Code section 768 nor the enactment of Public Utilities Code sections 1063.5 and 3553 prohibit this Commission from extending requirements like those in Sections 1063.5 and 3553 to existing carriers.

3. The Commission has the authority to adopt the attached G.O.

4. The attached G.O. is in the public interest.

APPENDIX A

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List of Appearances

Respondents: Walsh, Donovan, Lindh & Keech, by Michael S. Rubin and Edward M. Keech, Attorneys at Law, for Leasway Transportation; Russell, Hancock & Jeffries, by John C. Russell, Attorney at Law, for Action Cement Transport, Inc., WMB Transportation, Inc., Tri-Modal Distribution Services, Inc., Modern Trucking Service, Inc., Knights Delivery Service, Inc., Meiko Freight Service, Inc., Iron Horse Equipment Corporation, R.P.M. Transportation, Inc., Qwikway Trucking, Inc., Dart Warehouse, United Hauling Corporation, and S & M Moving Systems; Ray Dulany, for Ray Dulany Trucking; Thomas J. Hays, for Frank C. Alegre Trucking; Russ E. Johnson, for Santa Clara Transfer Service, Inc.; James D. Martens, for James D. Martens; Kurt Nelson, for Nelson Bros. Trucking Company; Michael Parsekyan, for Michael Parsekyan Trucking; Jerry Jackson, for Shane Industries; Jon A. Johnson, for R.G.S. Trucking; Jerry Jackson, for Shane Industries; and Jon A. Johnson, for R.G.S. Trucking.

Interested Parties: Hanson, Bridgett, Marcus, Vlahos & Rudy, by Daniel W. Baker, Attorney at Law, for Ad Hoc Carriers Committee; Greene, Chauvel & Descalso, by Ronald C. Chauvel, Attorney at Law, for Greene, Chauvel & Descalso; Anderson, Donovan & Poole, by Edward G. Poole, Attorney at Law, for Anderson, Donovan & Poole; Silver, Rosen, Fischer & Stecher, by Michael J. Stecher, Attorney at Law, for Silver, Rosen, Fischer & Stecher; Edward J. Hegarty, Attorney at Law, for California Moving & Storage Association and California Dump Truck Owners Association; Daniel J. Mc Carthy, Attorney at Law, and Luke R. Sherwood, for California Trucking Association; Milton W. Flack, Attorney at Law, for Cal-West Tariff Bureau; Martin E. Foley and William W. Pugh, Attorneys at Law, for The National Motor Freight Traffic Association; Barry Broad, Attorney at Law, for California Teamsters Public Affairs Council; Larry Farrens, for California Carriers Association; George Findley, for Independent Truckers Association, Inc.; Paul S. Finkle, for Western Employer Associates; Ralph J. Fries, for Owner Operators Independent Drivers Association; David N. Gibson, for California Coalition for Trucking Deregulation; Douglas Hill, for

California Moving & Storage Association; James D. Martens, for California Dump Truck Owners Association; Michael York, for Highway Carriers Association; Eduardo Brown, for Waterfront Rail Truckers Union; James R. Footé, for Associated Independent Owner-Operators, Inc.; Stephen Miley, for Association of Messenger Courier Services; Keith E. Miller, for Miller Traffic Service, Inc.; and Bob Burt, Lou Filipovich, and Ernesto Nevarez, for themselves.

Division of Ratepayer Advocates: Maryalis McGuinness.

Transportation Division: James T. Quinn, Attorney at Law, Carroll D. Smith and Rita A. Clark.

(END OF APPENDIX A)

GENERAL ORDER NO. 162

PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA

RULES REGARDING SAFETY MEASURES REQUIRED OF FOR-HIRE CARRIERS OF
PROPERTY OPERATING OVER PUBLIC HIGHWAYS UNDER THE AUTHORITY OF
THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA.

Adopted April 22, 1992, Effective May 22, 1992

Decision 92-04-052 in I.90-12-006

1. APPLICATION AND SCOPE

1.1

This General Order is applicable to all highway common carriers, cement carriers, agricultural carriers, cement contract carriers, dump truck carriers, heavy-specialized carriers, highway contract carriers, livestock carriers, tank truck carriers, vacuum truck carriers and household goods carriers operating under the jurisdiction of the Commission.

1.2

This General Order is issued to promote highway carrier safety by helping assure that highway carriers' motor vehicles will be maintained in good repair and that operations will be conducted in a safe and lawful manner.

2. DEFINITION OF TERMS USED IN THIS GENERAL ORDER

2.1

"AGRICULTURAL CARRIER" means an agricultural carrier as defined in Section 3525 of the Public Utilities Code.

2.2

"CEMENT CARRIER" means a cement carrier as defined in Section 214.1 of the Public Utilities Code.

2.3

"CEMENT CONTRACT CARRIER" means a cement contract carrier as defined in Section 3519 of the Public Utilities Code.

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- 2.4 "DRIVER" means a person who drives a motor vehicle used by a highway carrier for transportation of property for hire.
- 2.5 "DUMP TRUCK CARRIER" means a dump truck carrier as defined in Section 3520 of the Public Utilities Code.
- 2.6 "HEAVY-SPECIALIZED CARRIER" means a heavy-specialized carrier as defined in Section 3524 of the Public Utilities Code.
- 2.7 "HIGHWAY CARRIER" means a for-hire carrier of property by motor vehicle. As used in this General Order, the term "highway carrier" includes all agricultural carriers, cement carriers, cement contract carriers, dump truck carriers, heavy-specialized carriers, highway common carriers, highway contract carriers, household goods carriers, livestock carriers, tank truck carriers and vacuum truck carriers.
- 2.8 "HIGHWAY COMMON CARRIER" means a highway common carrier as defined in Section 213 of the Public Utilities Code.
- 2.9 "HIGHWAY CONTRACT CARRIER" means a highway contract carrier as defined in Section 3517 of the Public Utilities Code.
- 2.10 "HOUSEHOLD GOODS CARRIER" means a household goods carrier as defined in Section 5109 of the Public Utilities Code.
- 2.11 "INDEPENDENT CONTRACTOR SUBHAULER" See "subhauler."
- 2.12 "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 (the LESSOR) who or which owns, controls, or is

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entitled to the possession of any motor vehicle, transfers to any other person, firm, or corporation (the LESSEE) the right to possession and control of such motor vehicle. "Lease" does not include a subhaul agreement.

- 2.13 "LIVESTOCK CARRIER" means a livestock carrier as defined in Section 3521 of the Public Utilities Code.
- 2.14 "MAINTENANCE FACILITY" See "terminal."
- 2.15 "MOTOR VEHICLE" means every motor truck, tractor or other self-propelled vehicle used for transportation of property over the public highways, and includes any trailer, semitrailer, dolly or other vehicle drawn thereby.
- 2.16 "OVERLYING CARRIER" See "prime carrier."
- 2.17 "OWNER-OPERATOR" means an owner-operator as defined in Section 3557 of the Public Utilities Code.
- 2.18 "PRIME CARRIER" (or "overlying carrier") means a highway carrier which contracts with a shipper to provide transportation service for the latter, but which highway carrier in turn engages another highway carrier (a subhauler or underlying carrier) to perform that service.
- 2.19 "SUBHAULER" (or "underlying carrier") means a highway carrier who renders transportation service to another highway carrier (a prime carrier or overlying carrier) for a specified recompense for a specified result, under the control of the prime carrier as to the result of the work only and not as to the means by which such result is accomplished.

2.20 "TANK TRUCK CARRIER" means a tank truck carrier as defined in Section 3522 of the Public Utilities Code.

2.21 "TERMINAL" (or "maintenance facility"), as used in this General Order, means a place where a highway carrier regularly garages or maintains a motor vehicle or from which a motor vehicle is operated or dispatched.

2.22 "UNDERLYING CARRIER" See "subhauler."

2.23 "VACUUM TRUCK CARRIER" means a vacuum truck carrier as defined in Section 3523 of the Public Utilities Code.

3. DEPARTURES

3.1 Departure from the provisions of this General Order may be granted upon formal application to the Commission and if the Commission finds that such departure is reasonable and necessary.

4. SAFETY EDUCATION PROGRAM

4.1 Each highway carrier shall ensure that each of its drivers participates at least twice each year in a safety education and training program that meets the minimum standards set forth in Appendix A.

4.2 A highway carrier may comply with Rule 4.1 by conducting its own safety education and training or by causing its drivers to participate in an appropriate program conducted by another provider of safety education and training. A program is appropriate if it meets the minimum standards set forth in Appendix A.

4.3

Record of driver participation in training.

4.3.1

Each highway carrier shall keep a record of its drivers' participation in safety education and training programs, specifying the organization sponsoring each training session attended, major topics covered and duration of session.

4.3.2

Each highway carrier shall keep a record, summarizing the duration and major topics covered, of each session of its safety training program. The record shall also include the name and driver's license number of every driver who participates in each session.

4.4

Each prime carrier shall make reasonable efforts to assist its subhaulers in complying with Rule 4.

5. DRIVING RECORDS

5.1

Each highway carrier operating vehicles used in transportation for compensation requiring a Class A or Class B driver's license shall participate in a program to regularly check the driving records of all drivers, including employees, subhauler owner-operators, and subhaulers' employees.

6. HOURS OF SERVICE

6.1

Each highway carrier shall observe the applicable hours of service regulations of state and federal law, for all drivers operating such highway carrier's motor vehicles in transportation for compensation.

6.2

No prime carrier shall knowingly permit its subhaulers to violate the provisions of Rule 6.1.

7. VEHICLE CONDITION

7.1

Each highway carrier shall maintain its motor vehicles used in transportation for compensation in a safe operating condition and in compliance with Division 14.8 of the Vehicle Code and with regulations contained in Title 13 of the California Code of Regulations relating to motor vehicle safety.

7.2

Each highway carrier shall have a preventive maintenance program for its motor vehicles used in transportation for compensation that conforms to Title 13 of the California Code of Regulations.

7.3

Each highway carrier shall ensure that its drivers conduct daily inspections of motor vehicles and prepare daily vehicle inspection reports as set forth in Title 13 of the California Code of Regulations.

7.4

Rule 7 applies to all highway carriers in respect to all motor vehicles operated thereby, regardless of whether such vehicles are owned, leased or otherwise in the possession of such carriers (see also Rule 9).

7.5

Each prime carrier shall make reasonable efforts to ensure that its subhauliers comply with Rule 7.

8. RETENTION OF DOCUMENTS

8.1

Unless a longer or shorter retention period is specified by statute, regulation, or order of the Commission, each highway carrier shall retain documents required by this General Order for the life of their effectiveness and a period of three years thereafter.

9. SCOPE OF HIGHWAY CARRIER RESPONSIBILITY FOR VEHICLES

9.1

Each highway carrier is responsible to the Commission for matters arising under this General Order pertaining to motor vehicles in its possession.

9.2

Each prime carrier is responsible for the requirements of the G.O. pertaining to any vehicle it leases to a subhauler whose services it uses, whether the prime carrier owns the vehicle or leases it from a third party.

9.3

Leased motor vehicle maintenance shall be the responsibility of the lessee except that the lease may provide that maintenance of the motor vehicle shall be the lessor's obligation. In the event of conflict between this General Order and General Order 130-series, the provisions of the latter shall prevail.

APPENDIX C

CARRIER SAFETY EDUCATION AND TRAINING PROGRAMS
(See Rule 4)

As a minimum, a carrier safety education and training program shall cover the following subjects, as set forth in the CALIFORNIA COMMERCIAL DRIVER HANDBOOK, published by the Department of Motor Vehicles:

Commercial Driver License Program, Qualifications, and Sanctions

Commercial Driver License Test

Inspecting Your Vehicle

Basic Control of Your Vehicle

Size and Weight of Vehicles and Loads

Transporting Cargo

Air Brakes

Combination Vehicles

Hazardous Materials

ORDER

IT IS ORDERED that:

1. The General Order (G.O.) attached as appendix B is adopted.

2. Investigation 90-12-006 is closed.

This order becomes effective 30 days from today.

Dated April 22, 1992 at San Francisco, California.

I dissent.

/s/NORMAN D. SHUMWAY
Commissioner

DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

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


NEAL J. SHULMAN, Executive Director
AB