

Decision 82 03 086 September 22, 1982

7
ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on)
the Commission's own motion to)
prepare and adopt rules and)
regulations which would relieve)
compensated intercorporate)
transportation of property from)
licensing and transportation)
rate regulation.)

OIR 3
(Rehearing granted
January 5, 1982)

(For appearances see Decision 93472.)

Additional Appearances

C. D. Gilbert, for California Trucking Association, and Don B. Shields, for Highway Carriers Association, petitioners for rehearing of D.93472.
Alan Edelstein, Attorney at Law, for California Teamsters Public Affairs Council; Silver, Rosen, Fischer & Stecher, by Andrew J. Skaff, Attorney at Law, for Lucky Stores, Inc.; Graham & James, by David J. Marchant, Attorney at Law, and James B. Henly, for California Carriers Association and Foster Farms; Jess J. Butcher, for California Manufacturers Association; Henry E. Manker, for Private Carriers Conference of American Trucking Association; Jack R. Wiley, for Hunt-Wesson Foods, Inc.; Stephen J. Shields and Gordon G. Gale, for the Clorox Company; Gordon G. Gale, for Traffic Managers Conference of California; and James D. Martens, for California Dump Truck Owners Association; interested parties.
Alberto Guerrero, Attorney at Law, Theodore H. Peceimer, and Dorothy Ligon, for the Commission staff.

OPINION ON REHEARING

This rulemaking proceeding was instituted on the Commission's own motion to consider the adoption of a policy which would grant compensated intercorporate hauling (CIH) relief from the need to obtain highway carrier operating authority and to observe rate regulation. CIH refers to the transportation of property for compensation over the public highways by a corporation for another corporation when both such corporations are members of the same corporate family. A corporate family is defined as a parent corporation and all subsidiary corporations in which the parent corporation owns, either directly or indirectly, a 100% interest.

Following public hearing, Decision (D.) 93472 issued August 18, 1981, adopted rules governing CIH in General Order (GO) 146. (GO 146, as amended, is attached as Appendix A) D.93472 concluded:

1. Our prior construction of the Public Utilities (PU) Code (particularly § 3511(b)) is no longer appropriate and a different construction now should be given to § 3511(b) because of the changed circumstances described in the order.
2. It is reasonable to construe § 3511(b) to exclude CIH from the definition of highway carrier set forth in § 3511, as CIH involves persons or corporations, through their own trucking operations, hauling their own property. Where a carrier operation or carrier corporation 100% owned by a parent corporation hauls property of another corporation 100% owned by the same parent, it is hauling its own property within the meaning of § 3511(b). Accordingly, CIH operations are outside the Commission's jurisdiction and exempt from Commission regulation.

3. No useful regulatory purpose is served by continuing the requirement that CIH carriers obtain operating authority from this Commission or that they observe minimum rates.
4. The exemption of CIH from the rate and operating right provisions of the PU Code will result in no undue or unlawful discrimination nor will it adversely affect other shippers or carriers competing with the CIH corporate family.
5. The Commission should, by general order, relieve CIH carriers from having to abide by the rates and operating right provisions of the PU Code.
6. GO 146 will achieve the purpose of relieving CIH carriers from having to abide by the Commission's regulations established under the PU Code when hauling for members of its corporate family.

D.82-01-26 issued January 5, 1982 granted the petitions of California Trucking Association (CTA) and Highway Carriers Association (HCA) for rehearing of D.93472. The order in D.93472 was not stayed and the provisions of GO 146 have been in effect since October 19, 1981. Appendix B sets forth the corporations which have filed "Notices of Intent to Engage in Compensated Intercompany Hauling".

The rehearing ordered in D.82-01-26 was held before Administrative Law Judge Mallory in San Francisco on May 6, 1982.

Evidence was presented on behalf of the Commission's Transportation Division staff (staff) and California Teamsters Public Affairs Council (Teamsters). CTA and HCA requested and were granted additional time to July 1, 1982 to review the staff presentation and to determine whether they desired a further hearing to cross-examine the staff witness or to present evidence. On June 3, 1981, CTA informed us as follows:

"Having now reviewed the Commission staff exhibits, we note the staff's legal basis for CIH is unchanged from the original staff position. We are advised by our counsel that the issue in OIR 3 remains a matter of law. In such circumstances, it appears the record would not be furthered by additional cross-examination on the exhibits' contents. Therefore, any further hearing days would expend the valuable time of the Commission, its staff and the affected parties without commensurate benefit."

HCA neither advised the Commission of its position nor requested further opportunity to present evidence.

Staff Evidence

The staff witness testified that prior to the issuance of D.93472, it was the policy of the Commission to consider each corporation within the framework of a corporate family as a separate entity and to require that when one member of the corporate family transported the goods of another corporate family member, for compensation, the former obtain a highway carrier permit, that it observe the Commission-established minimum rates, and that it maintain required public liability and property damage insurance.

It is the staff's view that since this policy was adopted by the Commission circumstances have changed. Few conglomerates existed when the policy was established, while there are many now. The staff finds no significant regulatory difference between transportation performed by a corporation for one of its divisions or for a separate wholly owned corporation. The staff witness stated that any compensation paid for transportation service within a corporate family is a bookkeeping transaction and has little effect on the objectives of rate regulation, such as guarding against preferences or discrimination. In the staff's view, transportation for a member of a corporate family by any other member of that family can be considered to be transportation by "corporations hauling their own property" as that term is used in PU Code § 3511(b), which excludes persons hauling their own property from regulation by the Commission under the Highway Carriers' Act (PU Code, Division 2 Chapter 1).

The staff witness addressed the contentions raised in the petition for rehearing that it is inconsistent to exempt CIH from regulation and also to require the filing of a "Notice of Intent to Engage in CIH", and a fee for filing such Notice. The staff witness testified that the issue is based on a misunderstanding of GO 146. The witness stated that GO 146, as its title indicates, applies only to highway carriers of property; that is, carriers under jurisdiction of this Commission. If any member of the corporate family participating in CIH holds operating authority from the Commission, it is subject to GO 146. Such a carrier has a dual role as a proprietary carrier and as a for-hire carrier and, as a for-hire carrier, it must comply with GO 146. However, where none of the corporate family members hold operating authority from the Commission, no member is subject to GO 146.

The staff witness asserted that the fee is a user charge assessed to partially offset the cost of processing the Notice of Intent and enforcement of GO 146. The witness believes that it is reasonable to allocate such costs to highway carriers which derive a benefit from the exemption.

The staff witness explained the administration of CIH by the Commission's Transportation Division since the issuance of D.93472. After examining filed "Notices of Intent to Engage in CIH" to determine if any of the participating corporations hold operating

authority issued by this Commission, the License Section arranges for publication of a summary of the notices in the Commission's Daily Calendar,¹ and notifies the Compliance and Enforcement Branch of the filing. Where none of the participants hold California operating authority, the notice and fee are returned to the sender who is informed that the filing is not necessary. The License Section recommends a change in the wording of GO 146 to clearly indicate when a filing of a "Notice of Intent" and fee are necessary.. The witness suggested that paragraph 1 of GO 146 be amended as follows:

1. Carriers subject to the order: This General Order applies to any highway carrier which holds or requires operating authority from this Commission, that engages in transportation of property for compensation over the public highway for another corporation when the carrier and the corporation for which the transportation is provided are members of the same corporate family, as defined in paragraph 2 below. (This General Order does not apply when none of the participating members hold or require operating authority issued by this Commission. Eligible corporate families in which none of the participants are under the jurisdiction of this Commission may engage in Compensated Intercompany Hauling and are not subject to this General Order.) (Underlining denotes addition.)

Staff testimony also indicated that it was unlikely that for-hire carriers would suffer diversion of traffic or be adversely affected by the exemption. This testimony was not challenged by petitioners for rehearing.

¹ This will also appear on the Commission's Daily Transportation Calendar, which was initiated on July 1, 1982 (see, Resolution ALJ-147).

Teamsters Evidence

Teamsters' witness testified in support of his request that all persons engaged in CIH be required to file Notices of Intent with this Commission, even though none of the corporate family's transportation services are subject to regulation by this Commission. The principal reason advanced for the Teamsters' proposal is that it would help to prevent the siphoning of business away from a company operating under a union agreement to an affiliated company which did not operate under such agreement. According to the witness a new member of a corporate family would be formed to operate with nonunion labor, and activities formerly performed by a corporate affiliate operating under a union agreement would be transferred to the nonunion affiliate. According to the witness, the filing of a Notice of Intent to engage in CIH by nonregulated entities will provide Teamsters with information it could not readily obtain elsewhere. The witness pointed out that federal statutory provisions require that nonregulated corporate families that engage in CIH must file Notices with the Interstate Commerce Commission (ICC). According to the witness, the ICC filings are not sufficient for Teamsters' purposes because they do not cover strictly intrastate transportation activities.

Discussion

The original phase of this proceeding was conducted under the Commission's Rules of Practice and Procedure governing rulemaking proceedings; thus, no evidence was received. The Commission's Transportation Division presented evidence in the rehearing phase which fully supported the need for the issuance of GO 146. The staff also explained the manner in which it had administered the provision of GO 146 since it became effective, and the changes the staff believes are necessary to conform the General Order to the staff's administrative practices. The proposed changes in the General Order also resolve the conflicts which were discussed in CTA's petition for rehearing.

There is now an evidentiary record to support the findings of fact set forth in D.93472. Based on that record we will affirm our prior findings. No presentation was made by petitioners for rehearing or any other party which would cause us to revise the conclusions of law set forth in D.93472. Those conclusions of law also will be affirmed.

Teamsters disagrees with the manner in which the staff has administered GO 146, in that Teamsters asks that all CIH corporate families be required to file Notices of Intent, whether or not any portion of their transportation activities are subject to Commission regulation. Teamsters cites, as authority for its request, the fact that federal statutes require that Notices of Intent be filed with the ICC by all CIH corporate families whether or not any of their transportation activities are subject to ICC regulation. This Commission has no similar enabling statute giving it authority to require filings by nonregulated entities in the transportation field. Moreover, the purpose underlying Teamsters' proposal, that the filing of such Notices would help Teamsters monitor union activities, has no compelling regulatory purpose. Teamsters' proposal should be denied. The staff's proposed amendment of GO 146 is reasonable and should be adopted. ✓

Findings of Fact

1. OIR 3 was instituted as a rulemaking proceeding to consider the adoption of a policy which would grant CIH relief from the need to obtain highway carrier operating authority and to observe rate regulation.

2. Based on the findings of fact and conclusions of law in D.93472, the Commission adopted GO 146 effective October 19, 1981, to exempt certain CIH transportation from rate regulation and the need to obtain carrier operating authority.

3. D.82-01-26 granted the petition of CTA and HCA for rehearing of D.93472.

4. Such rehearing was held at which the Commission staff adduced evidence in support of the actions taken in D.93472. No evidence or argument was presented by petitioners for rehearing.

5. Based on the augmented evidentiary record, we affirm the following findings set forth in D.93472:

- "2. A copy of the OIR, along with a proposed general order to implement the policy, was mailed to all highway carriers and known interested parties and organizations.
- "3. Interstate CIH operators recently were relieved from having to abide by the certificate and rate provisions of the Interstate Commerce Act."

* * *

- "5. The Commission historically has considered CIH to be subject to the operating right and rate regulation provisions and to the business license tax and rate fund fee provisions of the PU Code.
- "6. The property transported in CIH service is property owned by the CIH carrier or a member of the same corporate family.
- "7. The overall corporate family revenue and expenses are not affected by the level of intercorporate charges paid for CIH.
- "8. No preference or discrimination results where a CIH carrier charges its corporate affiliates less than the otherwise legal rate, since a CIH carrier essentially is engaging in proprietary operations.
- "9. Little or no diversion of traffic from independent for hire carriers to CIH operations is anticipated to result from relieving CIH carriers from regulation under the Highway Carriers' Act.
- "10. No benefit from a public regulation standpoint is achieved by requiring CIH

carriers to abide by operating right and rate provisions of the PUC Code when hauling for a member of its corporate family.

- "11. The circumstances surrounding CIH have materially changed since the Commission initially interpreted the HCA to require rate and licensing regulation of CIH, in the following respects:
- "(a) Corporate structures have become more complex resulting in more conglomerates consisting of many corporations engaged in diverse enterprises;
 - "(b) The Commission has embarked on a program of rate reregulation with the ultimate objective of carrier-made rates replacing minimum rates. In implementing that program, general commodity minimum rate tariffs have been cancelled.
 - "(c) The preponderance of intrastate motor carrier transportation involves general commodities, for which there are no longer any minimum rates.
 - "(d) CIH has been exempted from ICC regulation on the federal level, and there is need for uniformity of regulation of CIH transportation at the federal and state level to avoid conflicting rates and so that CIH carriers can fully realize the efficiencies resulting from the federal action.
- "12. No competing shippers or carriers will be adversely affected and no detriment from a public regulation standpoint will ensue by exempting commodities moving in CIH service from regulation established under the PU Code
- "13. CIH carriers should not be permitted to use subhaulers for the transportation of property moving in CIH service.

"14. The provisions of GO 146 are reasonable, necessary and appropriate for CIH traffic.

6. The administration of GO 146 by our Transportation Division staff since October 19, 1981 is reasonable.

7. The amendment of GO 146 proposed by our staff would conform the General Order to the manner in which it has been administered since its inception. The proposed amendment is reasonable and should be adopted.

8. The proposals of Teamsters are not reasonable or necessary and should not be adopted.

Conclusions of Law

1. Our prior construction of the PU Code (particularly § 3511(b)) is no longer appropriate and a different construction now should be given to § 3511(b) because of the changed circumstances set forth in the above findings.

2. It is reasonable to construe § 3511(b) to exclude CIH from the definition of highway carrier set forth in § 3511, as CIH involves persons or corporations, through their own trucking operations, hauling their own property. Where a carrier operation or carrier corporation 100% owned by a parent corporation hauls property of another corporation 100% owned by the same parent, it is hauling its own property within the meaning of § 3511(b). Accordingly, CIH operations are outside the Commission's jurisdiction and exempt from Commission regulation.

3. No useful regulatory purpose is served by continuing the requirement that unregulated CIH carriers obtain operating authority from this Commission or that CIH carriers observe the Commission's rate regulations.

4. The exemption of CIH from the rate and operating right provisions of the PU Code will result in no undue or unlawful discrimination nor will it adversely affect other shippers or carriers competing with the CIH corporate family.

5. GO 146 achieved the purpose of relieving CIH carriers from having to abide by the Commission's regulations established under the PU Code when hauling for members of its corporate family.

6. GO 146-A, containing the revision of GO 146 found reasonable, should be adopted by the Commission.

ORDER ON REHEARING

IT IS ORDERED that:

1. General Order 146-A as set forth in Appendix A is adopted to become effective October 22, 1982.

2. The Executive Director of the Commission shall cause a copy of General Order 146-A to be served by mail on each highway carrier of property holding a certificate or a permit issued under the Public Utilities Act, Public Utilities Code Division 1, Chapter 5 or the Highway Carriers' Act, Public Utilities Code Division 2, Chapter 1.

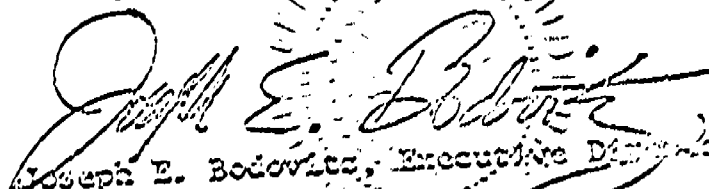
3. The Executive Director of the Commission shall cause a copy of this decision to be served on each party of record in this proceeding.

This order becomes effective 30 days from today.

Dated SEP 22 1982, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. CREW
Commissioners

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


Joseph E. Bodovitz, Executive Director

APPENDIX A

Page 1

General Order 146-A

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RULES IMPLEMENTING COMPENSATED INTERCORPORATE HAULING
EXEMPTION FOR HIGHWAY CARRIERS OF PROPERTY.

Adopted September 22, 1982 . Effective October 22, 1982 .

Decision 82-09-086 in OIR 3.

1. Carriers subject to the order: This General Order applies to any highway carrier which holds or requires operating authority from this Commission, that engages in transportation of property for compensation over the public highway for another corporation when the carrier and the corporation for which the transportation is provided are members of the same corporate family, as defined in paragraph 2 below. (This General Order does not apply when none of the participating members hold or require operating authority issued by this Commission. Eligible corporate families in which none of the participants are under the jurisdiction of this Commission may engage in Compensated Intercorporate Hauling and are not subject to this General Order.)
2. Definitions: (a) Corporate Family means a parent corporation and all subsidiary corporations in which the parent corporation owns, directly or indirectly, a 100% interest. (b) Compensated Intercorporate Hauling (CIH) means transportation of property for compensation over the public highways by a corporation for another corporation when both such corporations are members of the same corporate family. The definition of the word "corporation" is set out in Public Utilities Code Section 3507.
3. Scope: Compensated transportation service by a member of a corporate family for other members of the same corporate family (Compensated Intercorporate Hauling) is exempt from Commission transportation rate and operating authority regulation established under provisions of the Public Utilities Code, subject to notice requirements. To qualify for the exemption, companies must be members of the corporate family in which the parent owns, directly or indirectly, 100% interest in the subsidiaries.

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4. Applicability: Highway carrier operations under the CIH referred to in paragraph 3 are now exempt. The notice required by this General Order must be filed with the Commission immediately. ✓
5. Notification: Whenever a corporation seeks to initiate exempt CIH it shall submit the following statement to the Commission's Transportation Division: ✓

"NOTICE OF INTENT TO ENGAGE IN COMPENSATED
INTERCORPORATE HAULING OPERATIONS AS
AUTHORIZED BY GENERAL ORDER 146

"This is to provide notice as required by General Order 146 that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in such general order.

- "1. Name of parent corporation and address of principal office.
- "2. Wholly owned subsidiaries which will participate in the operations, and address of their respective principal offices as listed below:
 - "a.
 - "b.
 - "c.

"All notices shall be submitted by the parent of the corporate family, by or for whose members proposed compensated intercorporate hauling operations are to be performed. The notice shall include the following affidavit from a person legally qualified to act on behalf of the parent corporation:

"I affirm that _____
is a corporation which directly or indirectly owns a
100% interest in the subsidiaries participating in
compensated intercorporate hauling under General Order _____
_____, listed in the attached notice."

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6. Changes in Participation in CIH:
 - a. If the parent intends that an additional subsidiary participate in CIH, it must file an updated notice.
 - b. Whenever the interest which a corporation owns in a subsidiary participating in CIH becomes less than 100%, operations under General Order 146, by or for that subsidiary, must be discontinued at once, and the parent must file an updated notice within 10 days.
7. Filing Fees: A notice required by General Order 146 to engage in compensated intercorporate hauling or to change such notice on file with the Commission shall be accompanied by a fee of \$150.
8. Engagement of Subhaulers: Subhaulers as defined in General Order Series 102 shall not be engaged to provide transportation services subject to this General Order.
9. Daily Calendar: Notices of Intent to Engage in Compensated Intercorporate Hauling Operations and any changes shall be listed in the Commission's Daily Transportation Calendar.

Dated SEP 22 1982, at San Francisco, California.

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA

John E. Bodin
By _____
Executive Director

(END OF APPENDIX A)

APPENDIX B
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Corporations Which Have Filed
"Notices of Intent To Engage
In Intercompany Hauling"

Parent Corporation: Household Merchandising Inc., (formerly known as City Products Corporation).

Subsidiaries: Coast-to-Coast Stores, Huffman-Koos Co., T.D.S. Transportation, Inc. T.G. & Y. Stores Co., Vons Grocery Co., White Stores Inc., American Furniture, Barker Bros., Ben Franklin, and Colby's Home Furnishings.

Parent Corporation: Adolph Coors Co.

Subsidiaries: Coors Container Co., Alumina Ceramics Inc., CIPCO Pte. Ltd., R1 Ceramic Co. Willbanks International Inc., Coors Energy Co., Coors Distributing Co., American Center for Occupational Health, Inc., Cadco Incorporated, Coors Food Products Co., Coors Transportation Co., The Rocky Mountain Water Co., and the Wanamaker Ditch Co.

Parent Corporation: Mobil Corporation

Subsidiaries: Container Corp of America, Montgomery Ward & Co. Inc., American Service Co., Jefferson Stores, Inc., Jefferson-Ward Stores, Inc., Standard T. Chemical Co., Inc., Pasadena Chemical Corp., W.F. Hall Printing Co., Chicago Rotoprint Co., Hall of Mississippi, Inc., Hall of Tennessee, Inc., and W. F. Hall Printing Co. of Georgia.

Parent Corporation: Simpson Timber Co.

Subsidiaries: Simpson Paper Co., Simpson Building Supply Company, Simpson Redwood Co., Simpson Extruded Plastics Co., Cal-Pac Industries, Inc, and Simpson Timber Co.

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Parent Corporation: PepsiCo., Inc.

Subsidiaries: Frito-Lay, Inc., Pepsi-Cola Bottling Co., Pepsi-Cola Metro Bottling Co., Inc., Lee Way Motor Freight, Inc., Nacal, Inc., North American Van Lines, Inc., PepsiCo Bldg Systems, Inc., Pizza Hut, Inc., Franchise Services, Inc., Pizza Hut of America, Inc., Pizza Hut of San Diego, Inc., Taco Bell and Bell Food Services, Inc.

Parent Corporation: Anheuser-Busch Companies, Inc.

Subsidiaries: Anheuser-Busch Inc. and Fairfield Transport, Inc.

Parent Corporation: Louisiana-Pacific Corporation

Subsidiary: Fibreboard Corporation

Parent Corporation: Koppers Co., Inc.

Subsidiaries: Miles & Sons Trucking Service, Inc., and Kaiser Sand & Gravel Co.

Parent Corporation: W. R. Grace & Co.

Subsidiaries: Ad Craft Inc. and 175 additional subsidiaries.

Parent Corporation: Redding Steel & Supply

Subsidiary: LET Trucking, Inc.

Parent Corporation: Hadley Fruit Orchards, Inc.

Subsidiary: Aztec Natural Foods Inc.

Parent Corporation: Heublein, Inc.

Subsidiaries: United Vintners, Inc., Kentucky Fried Chicken Corp., and Beaulieu Vineyard

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Parent Corporation: Denny's, Inc.

Subsidiaries: Winchell's, Proficient Food Company, and DFC Trucking Co.

Parent Corporation: Foster Poultry Farms

Subsidiaries: Foster Almond Farms, Foster Food Products, Foster Farms Services, Foster Turkey Farms, Foster Turkey Products, and Foster Commodities

Parent Corporation: John Lenore & Company

Subsidiaries: Southern California Wine Merchants, Inc., Logret Import & Export, and JDL Motor Express

Parent Corporation: Fourth Street Rock Crusher

Subsidiary: Southwest Type "C" Distributors, Inc.

(END OF APPENDIX B)

Decision 82 09 036

SEP 22 1982

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1. Carriers subject to the order: This General Order applies to any highway carrier which holds or requires operating authority from this Commission, that engages in transportation of property for compensation over the public highway for another corporation when the carrier and the corporation for which the transportation is provided are members of the same corporate family, as defined in paragraph 2 below. (This General Order does not apply when none of the participating members hold or require operating authority issued by this Commission. Eligible corporate families in which none of the participants are under the jurisdiction of this Commission may engage in Compensated Intercompany Hauling and are not subject to this General Order.) (Underlining denotes addition)

Staff testimony also indicated that it was unlikely that for-hire carriers would suffer diversion of traffic or be adversely affected by the exemption. This testimony was not challenged by petitioners for rehearing.

¹ This will also appear on the Commission's Daily Transportation Calendar, which was initiated on July 1, 1982 (see, Resolution ALJ-147).

There is now an evidentiary record to support the findings of fact set forth in D.93472. Based on that record we will affirm our prior findings. No presentation was made by petitioners for rehearing or any other party which would cause us to revise the conclusions of law set forth in D.93472. Those conclusions of law also will be affirmed.

Teamsters disagrees with the manner in which the staff has administered GO 146, in that Teamsters asks that all CIH corporate families be required to file Notices of Intent, whether or not any portion of their transportation activities are subject to Commission regulation. Teamsters cites, as authority for its request, the fact that federal statutes require that Notices of Intent be filed with the ICC by all CIH corporate families whether or not any of their transportation activities are subject to ICC regulation. This Commission has no similar enabling statute giving it authority to require filings by nonregulated entities in the transportation field. Moreover, the purpose underlying Teamsters' proposal, that the filing of such Notices would help Teamsters monitor union activities, has no compelling regulatory purpose. Teamsters' proposal should be denied. The staff's proposed amendment of

SS ← GO 146 is reasonable and should be adopted.

Findings of Fact

1. OIR 3 was instituted as a rulemaking proceeding to consider the adoption of a policy which would grant CIH relief from the need to obtain highway carrier operating authority and to observe rate regulation.

2. Based on the findings of fact and conclusions of law in D.93472, the Commission adopted GO 146 effective October 19, 1981, to exempt certain CIH transportation from rate regulation and the need to obtain carrier operating authority.

3. D.82-01-26 granted the petition of CTA and HCA for rehearing of D.93472.

4. Such rehearing was held at which the Commission staff adduced evidence in support of the actions taken in D.93472. No evidence or argument was presented by petitioners for rehearing.

5. Based on the augmented evidentiary record, we affirm the following findings set forth in D.93472:

"2. A copy of the OIR, along with a proposed general order to implement the policy, was mailed to all highway carriers and known interested parties and organizations.

SS
"3. Interstate CIH operators recently were relieved from having to abide by the certificate and rate provisions of the Interstate Commerce Act."

* * *

"5. The Commission historically has considered CIH to be subject to the operating right and rate regulation provisions and to the business license tax and rate fund fee provisions of the PU Code.

"6. The property transported in CIH service is property owned by the CIH carrier or a member of the same corporate family.

"7. The overall corporate family revenue and expenses are not affected by the level of intercorporate charges paid for CIH.

"8. No preference or discrimination results where a CIH carrier charges its corporate affiliates less than the otherwise legal rate, since a CIH carrier essentially is engaging in proprietary operations.

"9. Little or no diversion of traffic from independent for hire carriers to CIH operations is anticipated to result from relieving CIH carriers from regulation under the Highway Carriers' Act.

"10. No benefit from a public regulation standpoint is achieved by requiring CIH

APPENDIX A
Page 2

- SS 4. Applicability: Highway carrier operations under the CIH referred to in paragraph 3 are now exempt. The notice required by this General Order must be filed with the Commission immediately.
- SS 5. Notification: Whenever a corporation seeks to initiate exempt CIH it shall submit the following statement to the Commission's Transportation Division:

"NOTICE OF INTENT TO ENGAGE IN COMPENSATED
INTERCORPORATE HAULING OPERATIONS AS
AUTHORIZED BY GENERAL ORDER 146

"This is to provide notice as required by General Order 146 that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in such general order.

- "1. Name of parent corporation and address of principal office.
- "2. Wholly owned subsidiaries which will participate in the operations, and address of their respective principal offices as listed below:
- "a.
"b.
"c.

"All notices shall be submitted by the parent of the corporate family, by or for whose members proposed compensated intercorporate hauling operations are to be performed. The notice shall include the following affidavit from a person legally qualified to act on behalf of the parent corporation:

"I affirm that _____
is a corporation which directly or indirectly owns a
100% interest in the subsidiaries participating in
compensated intercorporate hauling under General Order _____
_____, listed in the attached notice."