

Decision No. 88967 JUN 13 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion to establish requirements
to be met by applicants for highway
carrier authority issued by the
Commission.

Case No. 10278
(Filed March 9, 1977)

(For List of Appearances see Appendix A.)

INTERIM OPINION - PHASE I

The requirements for obtaining authority to operate as a highway permit carrier, highway common carrier, or a motor transportation broker, vary substantially from strict adherence to precisely stated statutory provisions in the Public Utilities Code to the exercise of broad discretion by the Commission. No recent investigation has been made relative to the procedures and criteria employed by the Commission relative to the issuance of permitted authorities.

In Case No. 10278 the Commission on its own motion found that the aforementioned investigation should be made and, while not necessarily limited to, should give consideration to the following topics:

1. The determination of public convenience and necessity as that term relates to certificates for highway common carriers, petroleum irregular route carriers, and cement carriers.
2. The degree of financial responsibility necessary to secure highway permit carrier authority.
3. Whether the present limits of public liability and property damage insurance requirements are adequate.

4. The new or revised criteria, if any, that should be established governing the transfer of highway carrier operating authority.
5. Whether limitations or restrictions should be imposed on an applicant for highway common carrier or highway permit carrier operating authority when such applicant is primarily engaged in a business which would involve the utilization of highway carriers.
6. Whether classifications or restrictions should be established based on carrier functions as such functions relate to carrier to carrier and/or carrier to shipper relationship.
7. Such other matters that may properly come before the Commission that will assist in its determination of this matter.

The scope of Phase I of this proceeding is limited to the receipt of evidence related to Topics 2, 3, and 4. It is understood that Topic 7 applies jointly with all other specified subject matters so as to encompass all related areas of inquiry which may be properly brought before the Commission for its consideration.

All appearances of record were initially invited to submit statements of position on or before July 25, 1977, and thereafter, introduce evidence deemed appropriate under the circumstances, in support of such stated positions at the public hearings to be scheduled in this matter. A series of 16 days of public hearings were held before Administrative Law Judge Gagnon commencing on May 23, 1977 at San Francisco. On May 1, 1978, Phase I (Topics 2, 3, and 4) was submitted for interim decision.^{1/}

^{1/} In accordance with prior understanding, upon the submission of Phase I of this proceeding, Topics 5 and 6 were announced as the scope of inquiry for the Phase II contemplated series of future hearings to be scheduled in Case No. 10278.

Antecedents

The Commission's last general investigation touching upon the financial responsibility and entry requirements for obtaining authority to operate as a highway permit carrier was conducted in 1931-32 (Decision No. 25243, in Case No. 3154, 38 CRC 81). The Commission's investigation was largely generated by the then existing depressed economy and the aggressive competitive reaction thereto by the various transportation modes, especially within the for-hire motor carrier industry which was rapidly expanding to a position of dominance for California intrastate traffic.

Remedial legislation proposed in 1933, relying heavily upon restrictive entry into the for-hire motor carrier field, failed passage due to substantive opposition by interests holding that restrictive entry was not an appropriate solution for the economic problems confronting California's transportation industry. Compromise legislation passed by the 1935 State Legislature provided for easy entry into the permitted carrier field with regulatory controls thereon to be achieved through the adoption of an intensive statewide minimum rate regulatory enforcement program.

The licensing requirements for obtaining permitted operating authority, together with the minimum rate program established pursuant to the 1935 legislation, have not impeded the increase in the number of licensed permitted carriers. Subsequent legislation enacted in 1951, 1963, and 1969 materially restricted entry into the for-hire transportation field as either a household goods carrier, cement contract carrier, or dump truck carrier. For-hire motor carriers holding permits increased from 7,624 in 1938 to 19,847 on June 30, 1977. These carriers held a total of 26,477 permits and 732 certificates of public convenience and necessity.

The types of highway carrier permits currently issued by the Commission are for:^{2/}

1. Radial Highway Common Carrier.
2. Highway Contract Carrier.
3. Cement Contract Carrier.
4. Petroleum Contract Carrier.
5. Dump Truck Carrier.
6. Household Goods Carrier.
7. Livestock Carrier and Agricultural Carrier.
8. Seasonal Livestock Carrier and Agricultural Carrier.

Pursuant to legislation enacted in 1977 (S.B. 860) the radial highway carrier classification was eliminated as of January 1, 1978 from the Public Utilities Code. With the enactment of S.B. 860 into law the legislature also established the agricultural carrier as a separate for-hire permitted carrier classification.^{3/} Radial highway common carriers have until December 31, 1978 to file for alternative "grandfather rights" to operate as a highway common carrier, highway contract carrier, and/or an agricultural carrier. Therefore, further consideration in this proceeding of the existing entry requirements for authority to operate as a radial highway

^{2/} Sections 213, 214, 214.1, 3571, 3582, 3611, 3621, and 5109 of the Public Utilities Code.

^{3/} Section 3582 of the Public Utilities Code states:

"No livestock carrier or agricultural carrier shall engage in the transportation...of livestock, or fresh fruits, nuts, vegetables, logs, and unprocessed agricultural commodities...unless there is in force a permit issued by the commission authorizing such operations."

common carrier will serve only as a basis for evaluating the historical results of the Commission staff's overall efforts to implement both the statutory and Commission discretionary entry requirements for obtaining permitted operating authority.

Present Entry Requirements

Issuance of New Permits. Applicants seeking initial authority to operate as a permitted carrier must first satisfy various entry requirements as specified in the Public Utilities Code for the particular sought permit authority. A list of such entry standards for the several classes of highway permit carriers is set forth in Appendix B hereof.

The present statutory entry standards leave the Commission with very little discretionary authority when evaluating whether it should issue a permit to operate as a radial highway common carrier, highway contract carrier, livestock carrier, and agricultural carrier, including related seasonal carriers. Whenever applicants for such authority meet the specified entry requirements, the Code provides that the Commission shall issue the sought permit. The only real area left for the exercise of Commission discretionary authority is the matter of financial responsibility. Historically, the Commission staff has interpreted this entry standard to be met whenever applicant demonstrated evidence of possessing the required amount of public liability and property damage insurance, cargo insurance, C.O.D. and surety bonds as required by the Code, and/or related Commission General Orders. In addition, applicant's financial showing must indicate a positive net worth. Presently in determining positive net worth the preponderance of applicant's assets may be in the form of non-operating property such as a private residence or automobile.

The entry standards for the aforementioned classes of permitted carriers also apply to all other highway permit carriers. However, additional statutory entry requirements and qualifications

are specified for the several remaining specialty types of highway permit carrier operations. Pursuant to 1969 legislation, requirements for entry into the dump truck carrier field were made extremely restrictive and may necessitate applications for such permits to be considered at a formal public hearing where protestants may have an opportunity to explain their opposition to the granting of the sought authority. More than 6,500 dump truck carrier permits were issued to existing operators under the so-called "grandfather" provisions of the 1969 legislation. Since that time only three new permits have been issued.

Applicants for petroleum contract carrier permits must establish the additional requirements of ability to perform the service. Their minimum insurance coverage is higher than that required of non-petroleum carriers.

The 1963 legislation which established the statutory cement contract carrier as a separate class of highway permit carrier included "grandfather" provisions which allowed issuance of such authorities to existing for-hire cement haulers. Thereafter, applicants have been required to meet vigorous entry standards almost identical to the statutory entry requirements established for dump truck carriers.

The Household Goods Carriers Act provides a separate and comprehensive body of regulations. In addition to the general entry standards that must be met by applicants for other types of permits, household goods carriers must provide cargo insurance of not less than \$5,000. Applicants for this type of permit must also submit to an examination designed to test their ability and knowledge to engage in the proposed operation. The examination is administered by the Commission staff and covers the rules governing household goods carriers, with heavy emphasis on the implementation of the Commission's Minimum Rate Tariff 4-B. Other standards which afford the Commission some discretionary control over the granting of household goods carrier permits relates to applicant's past record with

the Commission or the personal integrity of the applicant or his business associates.

The statutory requirements governing the issuance of livestock carrier and agricultural carrier permits are similar to those applicable to radial highway common carriers and highway contract carriers.

Suspension and Revocation. Pursuant to statutory and/or Commission orders, permits are suspended or revoked for a variety of reasons but the principal causes are:

1. Failure to maintain active insurance coverage on file.
2. Failure to pay quarterly fees and taxes.
3. Failure to respond to information requests.

Carriers are notified approximately thirty days before the termination date of their active insurance coverage on file with the Commission that the carriers' operating authorities will be suspended as of such termination date and revoked thereafter unless the insurance on file is reinstated or new insurance is filed. Similar advance notices of potential suspensions and revocations of permits are also issued for causes of action other than insurance failure. On occasion, carriers will request reinstatement of their revoked permits. Where mitigating circumstances indicate a justifiable inability to comply, reinstatement of permits may be granted upon compliance with all outstanding requirements, including payment of a \$125 fee for each permit. Where revocation results from carrier's failure or circumstances over which it has direct control, requests for reinstatement will be considered generally only after public hearing.

Present Permit Status. In Exhibit 8 the staff has presented statistical data designed to show the status of highway permit authorities issued over a period of several years under existing statutory standards and/or administrative authority (including present financial responsibility requirements) of the Commission.

Highway carrier permits revoked during fiscal years 1973 through 1976, together with the reasons for such revocations, are:

TABLE 1

Analysis of Revocation of Highway Carrier Permits
For Fiscal Years 1973 Through 1976

<u>Cause of Revocation</u>	<u>Number of Carriers</u>			
	<u>1972-73</u>	<u>1973-74</u>	<u>1974-75</u>	<u>1975-76</u>
Inadequate Insurance	308	288	518	511
Out of Business	204	231	215	183
Death of Permittee	3	-	1	-
Fees and Taxes	237	305	316	298
Termination:				
Seasonal Carriers	912	913	1,040	1,527
Non-exercise	243	103	122	150
Miscellaneous	74	93	83	99
Total	<u>1,981</u>	<u>1,933</u>	<u>2,295</u>	<u>2,768</u>
Less Seasonal	912	913	1,040	1,527
Net Revocations	<u>1,069</u>	<u>1,020</u>	<u>1,255</u>	<u>1,241</u>

*Includes: Failure to comply with Data Bank Requests.

Failure to purchase minimum rate tariffs
to operate (Sec. 3737 of the Code).

The staff explains that with the exception of seasonal permits, which terminate automatically, death of permittee, and a few other minor reasons, financial insufficiency is the underlying major cause for revocation of permits. Carriers who are experiencing financial difficulties and have decided to go out of business will allow their permits to be revoked for whatever cause is pending. Many other carriers who decide to terminate their operations sell their permits through the media of seeking authority to transfer such permits to other parties. The permits usually have some cash value, especially dump truck carrier permits, which acts as an incentive to seek transfer of a permit rather than to allow revocation thereof. While the individual reasons underlying transfers are not generally known, the staff states it is apparent from their

contact with many of the transferors that the decision to transfer is compelled by the unacceptable financial results of operations. The transfer of permits for fiscal years 1973-1976 is:

TABLE 2

Turnover of Highway Permit Carriers

	<u>1972-73</u>	<u>1973-74</u>	<u>1974-75</u>	<u>1975-76</u>
Total Transfer	1,669	1,772	1,775	1,759
Less Change in Form of Equity	167	177	176	176
Net Transfer	<u>1,502</u>	<u>1,595</u>	<u>1,579</u>	<u>1,583</u>
Revocations*	<u>1,069</u>	<u>1,020</u>	<u>1,255</u>	<u>1,241</u>
Total Turnover	<u>2,571</u>	<u>2,615</u>	<u>2,834</u>	<u>2,834</u>

*Does not include seasonal carriers whose permits automatically expire after 90 days (Sec. 5004 of the Code).

The staff also developed for the same fiscal periods the total number of permits revoked or transferred by class of highway permit carrier. The results of the staff's statistical evaluation are:

TABLE 3

Number of Highway Carrier Permits
Revoked - Transferred
Fiscal Year

	<u>1972-73</u>		<u>1973-74</u>		<u>1974-75</u>		<u>1975-76</u>	
	<u>Revoked</u>	<u>Transferred</u>	<u>Revoked</u>	<u>Transferred</u>	<u>Revoked</u>	<u>Transferred</u>	<u>Revoked</u>	<u>Transferred</u>
Radial Highway Common	825	1,350	737	1,342	889	1,315	931	1,367
Highway Contract	159	258	131	245	194	227	173	214
Dump Truck	104	766	89	848	91	736	120	628
Petroleum Contract	19	16	10	17	7	19	18	21
Cement Contract	1	5	1	2	-	2	1	3
Household Goods	66	58	59	60	67	54	74	73
Livestock	-	3	20	40	120	27	51	26
Seasonal Agricultural, Including Livestock ⁽¹⁾	994	-	1,059	-	1,193	-	1,720	-
Total Permits	2,168	2,456	2,106	2,554	2,561	2,380	3,088	2,332
Total Carriers	2,981	1,669	1,933	1,772	2,295	1,755	2,768	1,759
	<u>912(1)</u>		<u>913(2)</u>		<u>1,040(2)</u>		<u>1,527(2)</u>	
	<u>1,069</u>		<u>1,020</u>		<u>1,255</u>		<u>1,241</u>	
Total Carriers Excluding Seasonal Carriers	18,188		18,368		18,510		18,724	
Total Discontinued Carriers, Excluding Seasonal Carriers And 10% of Transferred Carriers	2,571		2,615		2,834		2,824	
Percentage Of Carriers Discontinued	14.1		14.2		15.3		15.1	

(1) Permit automatically expires after 90 days. Renewable twice during calendar year (Sec. 5004 of the Code). No statutory authority to transfer seasonal permit.

(2) From Table 1.

Based on the 18,724 permitted carriers in operation (excluding seasonal carriers) in the 1975-76 fiscal period, Table 3 indicates a total of 2,824 carriers ceased operations which represents an annual discontinuance rate of 15.1 percent. The rate of turnover has remained relatively constant over the past several years. The present turnover rate is, in the first instance, largely a reflection of the Commission's somewhat lenient evaluation of the financial status of parties seeking authority to operate as a highway permit carrier. Our present implementation of the statutory entry standard of financial responsibility is failing to screen out those applicants seeking to commence permitted highway carrier service without the current liquid assets required to sustain the proposed operations, especially during the initial start-up period and prior to the anticipated flow of compensating operating revenues. To this latter extent, at least, our existing procedures for evaluating the financial responsibility of a prospective permit carrier are not compatible with the basic intent of the statutory requirement of financial responsibility.

Proposed Financial Entry Requirements

The granting of a highway carrier permit to an applicant having current assets which are either inadequate per se or in a form of insufficient liquidity as to be incapable of sustaining the proposed service during the inauguration period, including the time required for the receipt of anticipated operating revenues, poses a threat of economic waste. First, if the under financed permittee ultimately fails and goes out of business he has not only experienced a personal loss of effort but any capital consumed in the process of this business failure might well have been diverted to more productive and financially rewarding fields of endeavor. Secondly, the entry, failure, and subsequent withdrawal of an under-financed and usually inefficient highway permit carrier operation from the highly competitive mainstream of for-hire transportation

has an adverse impact upon the remaining established carriers. If a significant number of such ill-advised and subsequently unsuccessful business ventures are issued permits the resulting failures may cause an economic breakdown in the otherwise efficient distribution and marketing of goods, thereby increasing the cost of production and prices to the ultimate consumer. Thirdly, the imputation of an excessive number of sub-marginal-highway permit operations places an uneconomical burden upon the California highway, and maintenance programs including public safety, and does not serve the public interest.

Staff Entry Proposals. To insure that the underlying intent of the statutory requirement of financial responsibility is fully implemented by the Commission, when considering an application for a highway carrier permit, its staff recommends that applicants be required to submit the additional information set forth in Appendix C hereof, a summary of which is:

1. Balance Sheet
2. Statement of Required Working Capital
3. Projected Profit & Loss Statement
4. Authorization for Release and Verification of Information
5. Certification of Shipper Support

Under current Commission procedures applications for a highway carrier permit must include a balance sheet setting forth applicant's current assets and liabilities. The staff proposes to have such balance sheet prepared in sufficient detail so as to be able to determine whether applicant's available cash plus other related assets readily convertible to cash are adequate to meet the required initial working capital.

The staff also recommends that each applicant be required to submit a "Required Capital Worksheet" setting forth the current operating expenses anticipated during the first thirty days of operation. The total operating expenses thus determined would

constitute the amount of working capital required to be available, in the forms of cash or other related current assets of sufficient liquidity to be readily convertible to cash, should the need arise. With such financial back-up the staff explains that applicant may reasonably be assured of surmounting the financial trauma usually experienced by permit carriers during the initial commencement of operations. ✓

Thirty days of initial working capital will, according to the staff, enable the permittee to sustain operations during an overall average extended credit period when receipt of revenues is not anticipated for services rendered over the first thirty days of operation. It is contemplated that the proposed required working capital will materially reduce the current rate of permit turnovers and enhance the equality of competitive opportunity for new entrants into the field. A realistic standard of "financial fitness" will encourage competition because new carriers will be sufficiently capitalized to have a reasonable opportunity to compete and succeed in the marketplace.

Under the staff proposals applicants for permit authority would be required to file with their application a pro forma projected profit and loss statement covering a period of from six months to a year. This statement would demonstrate to the Commission what, in the best judgment of applicant, will the results of the proposed operations be during the early phases if the transportation service under both assured and estimated available traffic. This additional information, like the aforementioned balance sheet and working capital entry requirements, is designed to further assure the future success of the proposed highway permit carrier operation.

It is also proposed that the application for a permit be supported by a prospective shipper who certifies in writing, that he will tender a designated amount of traffic to applicant if granted the sought permit authority. This constitutes a further effort to insure the initial success of permittee and also tends to enhance the validity of applicant's projected estimate of operating revenues. Finally, the staff would have the applicant sign a release authorizing the Commission to examine the former's financial records to the extent

necessary to verify the financial data set forth in the application as justification for the granting of the sought highway carrier permit.

Transfer of Permits. The statutory entry requirements for new permits have three basic objectives which are:

1. To control the number of carriers in the specified transportation field.
2. To establish personal and financial qualifications.
3. To establish technical requirements for entry into the field such as residency, knowledge of governing statutes, tariffs, rules, insurance, application, and filing fees.

The control of entry standard referred to as the first objective applies to the issuance of new cement contract carrier and dump truck carrier permits. The concern here is with the competitive impact on existing carriers in the same fields, public safety and the use of the highways. This standard apparently discourages new applicants and has virtually eliminated the issuance of new dump truck and cement contract carrier permits. Since this standard does not apply to the transfer of permits, the only practical method of entering these two fields of transportation is to acquire an existing authority from another party.

Except for new household goods carrier permits, the personal and financial qualifications, which include fitness, integrity, business ability, and financial responsibility (financial ability), have not in every instance been carried over by the Commission to apply to the statutory provisions governing the transfer of permits. Several of the code sections pertaining to transfers refer only to Commission authorizations for transfers and require the transferee to meet only certain technical entry standards, such as those mentioned in the aforementioned objective.

The statutory entry standards which, in effect, control the number of dump truck and cement contract carriers through restrictive provisions governing the issuance of new permits do not apply to the transfer of such permitted authorities. On the other hand, the staff contends that it is unreasonable to require applicants for new permits to meet such standards as personal fitness, financial responsibility, business ability, integrity, and others, but not to require these same personal and financial qualifications of transferees, especially when applicants obtain permits via transfers shortly after such permits were issued to the initial holders. Under the circumstances, the staff recommends that in addition to the existing entry standards as either specifically provided in the governing statutes or as administratively invoked by the Commission, applicants for transfers of all permits should be required to meet the additional requirements set forth in Appendices B and C hereof.

Other Entry Proposal

The various staff proposals for upgrading the Commission's present procedures for implementing the statutory entry standards required to be met by applicants seeking the issuance of new permits or transfers of existing permits have the general support and/or approval of most interested parties. A summary of their alternative suggestions follows.

The Western Conference of Teamsters presented testimony in general support of the staff's proposals. With respect to the staff's proposal requiring applicant to have a minimum of 30 days working capital as a test of their financial responsibility, the Teamsters suggest that a 90-day working capital requirement would be more realistic. The Teamsters witness also stressed the fact that a positive net worth is no assurance as to the liquidity of the assets of an applicant for a permit. He stated that "...in business, it is a very, very short step from illiquidity to insolvency". (RT 1025.) If the Commission is concerned over

the short-term financial responsibility of an applicant for a permit the Teamsters witness urged that emphasis be placed upon the liquidity of an applicant's assets rather than their overall positive net worth.

The California Trucking Association (CTA), while generally supporting the staff's recommendation, presented several additional or alternative proposals. For example, the CTA suggests that:

1. All permit applications be formally docketed.
2. With respect to applicant's financial showing, the CTA would require:
 - a. Cash flow statements.
 - b. All financial statements to reflect actual information for past full year (if applicant has been in trucking business) or a pro forma statement for not less than 90 days for new permittee.
 - c. Source of capital to purchase equipment must be shown.
 - d. All financial statements to be audited and certified.
3. Shipper or prime carrier support to be evidenced by the execution of a bi-lateral contract.

The California Carriers Association (CCA) supports the staff's recommendations relative to financial responsibility. However, in view of the authorized credit period for dump truck carriers the CCA suggests the staff's proposal for 30 days working capital as a test of financial responsibility be increased to 60 days. The CCA does not believe that there is any need for the filing of a profit and loss statement for dump truck carriers in view of the rather extensive regulations of their compensation. The CCA recommends that all applicants for transfer of a dump truck permit should be required to pass a test as to their general knowledge of conducting a business, and applying the governing dump truck tariffs.

The California Dump Truck Owners Association (CDTOA) recommends that:

1. The staff's proposed 30-day working capital requirement be increased to 60 days.
2. The staff's proposed pro forma operating statement be for a 6-month period.
3. All applicants who seek a transfer of a dump truck carrier permit be required to pass a written and/or oral qualifying examination.
4. The CDTOA generally supports the staff's other related proposals for evaluating the statutory entry standards for applicants seeking dump truck carrier permits.

Statements of other interested parties were generally supportive of the staff's position. Concern, however, was expressed that the additional criteria suggested by the staff for implementing the financial responsibility entry standard may create an undue hardship upon agricultural and livestock carriers, thereby reducing the number of such carriers to the extent service may be impaired and rates increased.

Discussion

The investigation conducted in this proceeding discloses that, under current Commission procedures, highway carrier permits are either being issued or transferred to applicants who do not adequately possess financial fitness. This is somewhat evidenced by the existing high turnover rate (15.1 percent) of permitted authorities, due principally to financial distress or general insolvency. The staff contends that a significant number of business failures occurring within the highway permit carrier field, especially during the early stages of their operation, could be avoided if improved procedures were adopted whereby the statutory requirement of financial responsibility would be adequately implemented.

In order to eliminate or substantially reduce the potential for unfavorable economic conditions to occur or persist within the for-hire transportation industry, the staff urges the adoption of several additional permit qualification procedures. With certain exceptions and/or modifications, adoption of the staff's proposals is generally supported by the various appearances actively participating in this investigation by the Commission. The staff's recommendations, modified to reflect certain alternative proposals submitted by other interested parties hereinafter recommended to be adopted, are set forth in Appendices B and C hereof.

With respect to the staff's suggested 30-day working capital requirement, the Teamsters request it be extended to cover the first 90 days of the prospective carrier's operations. The CDTOA and the CCA urge adoption of a 60-day working capital requirement. The 90-day working capital proposal of the Teamsters is, in the main, largely premised upon the financial demands for initiating a private commercial or industrial enterprise and not a regulated business such as a for-hire highway permit carrier. The 30-day working capital proposed by the staff is related to the Commission's rules governing the extension of credit. The authorized credit period for permitted carriers generally is 7 days. Under certain circumstances this may be extended to 15 or even 30 days.(e.g., rebilling). For dump

truck carriers a tariff maximum credit period of 50 days is permissible. The 60-day working capital proposal of the CDTOA and the CCA is premised on the authorized credit period for dump truck operators. In order to avoid separate working capital requirements to qualify for any one of the several classes of permitted carrier authorities, an overall 45-day working capital requirement appears sufficient under current circumstances.

The suggestion by the Teamsters witness that emphasis should be placed upon the liquidity of a prospective permit carrier's assets, rather than the positive nature of its net worth, is well taken and should be adopted. This is especially true of any current assets to be considered as part of working capital. In Appendix C, therefore, the staff's working capital proposal has been amended to refer to that amount of available cash and/or liquid current assets readily convertible to cash.

In connection with the staff's proposal requiring applicants for a permit to file a projected profit and loss statement, it has been suggested that the statement cover anticipated results of operations for periods not less than 6 months or one year. The staff, on the other hand, has left this question somewhat open so as to be able to make specific evaluations with respect to the several classes of permit authorities involved. With the introduction of new qualifications and criteria required to be met in order to first satisfy the several entry standards contained in the Code to cause a permit to be issued or transferred, the appropriate period to be covered by a projected profit and loss statement should be not less than three months nor more than one year as special circumstances for a given class of permit indicate to be necessary. With this understanding, the staff's proposal in this regard is appropriate.

All suggestions and/or exceptions introduced by the parties have been thoroughly considered. It has been determined that the staff's overall suggested additional qualifications and/or criteria, as modified in Appendices B and C hereof, should be put into practice as soon as possible. When sufficient empirical knowledge is available relative to the impact of the newly established procedures for evaluating the statutory entry standards for obtaining permitted authority, the Commission will then be in a better position to evaluate what, if any, further action should be taken relative to the subject matter covered by Topic 2 (Financial Responsibility) and Topic 4 (Transfer of Permits) of Case No. 10278.

This decision and phase of investigation addresses criteria for administratively implementing the "financial fitness" requirements for permitted carriers pursuant to the Public Utilities Code. The Commission and staff could have internally implemented administrative changes without this investigation. However, we desired to hear proposals from the highway carrier industry, shippers, and interested parties to insure we had the benefit of all points of view. Also, we are in the midst of an overall review of highway carrier regulation with respect to financial fitness as well as other areas of concern. We want to afford a full opportunity for constructive input. Because we establish and order new procedures and criteria for showing "financial fitness" does not mean such policies may be instituted only by Commission order. ✓

Topic 3 (Insurance)

In order to expedite implementation of the additional and/or revised procedures to be adopted pursuant to Topics 2 and 4 in Case No. 10278, it has been determined that consideration of evidence introduced relative to Topic 3 (Insurance) should be deferred. A separate interim decision disposing of Topic 3 in Case No. 10278 will be issued in the immediate future.

Findings

1. The existing statutory provisions of the Public Utilities Code require that applicants seeking authority to operate as a highway permit carrier must first obtain a permit for each type of authority sought.

2. In order to obtain a highway carrier permit, applicant must demonstrate that his personal and financial qualifications fully meet the several statutory entry requirements specified in the Code for each type of sought permitted authority.

3. The Commission issued its order instituting investigation in Case No. 10278 to determine whether the basic objectives of the statutory entry standards were being fully and adequately implemented under the current administrative procedures employed by the Commission.

4. Pursuant to the Commission's order in Case No. 10278, evidence was received relative to, but not necessarily limited to, the development of the following criteria deemed essential to a full and accurate application of the basic objectives reflected in the statutory requirements for the granting of permitted authorities:

- a. Topic 2 - The degree of financial responsibility necessary to secure a highway carrier permit.
- b. Topic 3 - Whether the present limits of public liability and property damage insurance required under present orders of the Commission are adequate.
- c. Topic 4 - The new or revised criteria, if any, that should be established for implementing the statutory requirements governing the transfer of existing highway carrier permitted authority.

5. The Commission's staff introduced extensive statistical information, including the results of various studies designed to show the profile, status, and general characteristics of outstanding permitted authorities issued under the Commission's current procedures for determining whether the personal and financial qualifications of applicants for permitted authority met the statutory requirements of the Public Utilities Code.

6. The staff evidence demonstrates that highway carrier permits granted by the Commission under existing statutory requirements are subsequently terminated due to revocation and transfer procedures at a relatively constant annual turnover rate of 15.1 percent.

7. The staff studies reveal that, except for seasonal permits which terminate automatically and death of permittee and a few other minor reasons, financial insufficiency is the underlying major cause for revocation and/or transfer of permits.

8. The investigation conducted in this proceeding discloses that, under current Commission procedures, highway carrier permits are either being issued or transferred to applicants who do not meet personal or financial qualifications to the full extent contemplated under the existing statutory requirements specified in the Public Utilities Code.

9. When poorly and insufficiently financed carriers are allowed to enter into the highly competitive field of for-hire transportation on a continuing basis, their too frequent and early business failures plus subsequent withdrawal from the transportation field constitute an unreasonable economic burden on the transportation industry and does not serve the public interest. A realistic standard for financial fitness will, if anything, encourage competition because new carriers will be sufficiently capitalized to have a reasonable opportunity to compete and succeed.

10. To insure that the underlying objectives of the statutory requirements pertaining to the personal and financial responsibilities of an applicant for a permit are fully implemented by the Commission, the staff recommendation that applicants be required to submit the additional information and/or criteria set forth in Appendices B and C hereof is reasonable.

11. Some of the statutory requirements which control entry into the dump truck carrier and cement contract carrier fields should not apply to the transfer of such permitted authorities. On the other hand, all applicants for transfer of permits should be required, either directly by statutory mandate or by the implied implementation thereof, to meet the additional entry standards set forth in Appendices B and C hereof.

12. All suggestions and/or exceptions to the staff's proposals introduced by other interested parties having been thoroughly considered, it has been determined that the staff's suggested additional qualifications and/or criteria, as modified in Appendices B and C hereof, have been shown to be just and reasonable. Such additional objectives for implementing the statutory entry requirements for obtaining highway carrier permit authorities should be placed into effect as soon as possible.

Conclusions

1. In light of the evidence introduced in Phase 1 (Topics 2 and 4) of Case No. 10278, the additional qualifications and/or criteria set forth in Appendices B and C hereof should be adopted and made part of the Commission's procedures for implementing the objectives of the statutory requirements to be met as a condition for obtaining highway carrier permitted operating authorities.

2. The additional qualification and/or criteria adopted by the order herein should be established and made effective within 45 days of the effective date of the ensuing order.

3. In order to expedite the establishment of the procedures to be adopted pursuant to Topics 2 and 4 of Case No. 10278, it has been determined that consideration of the evidence introduced relative to Topic 3 (Insurance) should be made the subject of a separate interim decision to be issued in the immediate future.

4. The petition of CCA for leave to file a brief in Phase 1 of Case No. 10278, having been considered, should be denied.

INTERIM ORDER

IT IS ORDERED that:

1. The Commission's established procedures for insuring the implementation of the objectives contained in the various statutory requirements of the Public Utilities Code, which must be met by applicants seeking highway permit carrier operating authorities, are hereby affirmed, as further amended to reflect the additional qualifications and/or criteria contained in Appendices B and C, attached hereto and by this reference made a part hereof.

2. The additional qualification and/or criteria adopted by this order should be established and made effective within forty-five days after the effective date of this order.

3. The petition of California Carriers Association for leave to file a brief in Phase 1 of Case No. 10278 is denied.

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

Dated at San Francisco, California, this 13th day of JUNE, 1978.

*I will file a dissent.
William Sycamore Jr.*

Robert D. ...
President

George L. Styring
Charles P. ...
Clair T. ...
Commissioners

APPENDIX A
Page 1 of 3LIST OF APPEARANCES

Respondents: Loughran & Hegarty, by Frank Loughran, Attorney at Law, for ABC Delivery Service, Jett Delivery Service, and 123 Delivery Service; Henry Bartolo, for Jet Delivery, Inc.; Joseph MacDonald, Lowell Christie, and Wayne Varozza, for California Motor Express; Mike R. Conrotto, for Mike Conrotto Trucking; Harold F. Culy, for Bayview Trucking, Inc.; Handler, Baker & Greene, by Marvin Handler and Daniel W. Baker, for A&B Garment Delivery (SF), A&B Transportation, American Transfer Co., Associated Freight Lines, Associated Transportation Co., Ditto Freight Lines, Doudell Trucking Co., Frank's Trucking, Hawkey Transportation, Lemore Transportation, Inc., Lodi Truck Service, Logistics, Market Express, Inc., Harry McKenzie Trucking Co., Morris Draying Company, Pellico Trucking, Pozas Bros. Trucking Co., Preston Trucking Co., Bill Rackley Trucking (also Bill Rackley), System 99, Trux Transport, and Warren Transportation; S. M. Haslett, III, for Haslett Co.; Frank Hayashida, for Basic Materials Transport; Tony Heywood and Steven B. Thomas, for West Transportation; Frank Ogi, for Insured Transporters, Inc.; Eldon M. Johnson, Attorney at Law, for Guthmiller Trucking (also O. F. Marcantonio) and Teresi Trucking; Robert C. Johnson and Marvin S. Maltzman, for Bekins Moving & Storage Co.; Armand Karp, for Rogers Motor Express; J. McSweeney and A. D. Smith, for Delta Lines; James A. Nevil, for Nevil Storage Co.; Lee Pfister, for Willig Freight Lines; Richard Proctor, for Dick Proctor Motor Transportation; Russell Schureman, Fritze & Hancock, by R. Y. Schureman, for Allyn Transportation Co., Max Binswanger Trucking, Brake Delivery Service-Meir Transfer Service, City Freight Lines, Evans Tank Line, Inc., Fikse Bros., Inc., Flour Transport, Inc., Griley Freightlines, Kern Valley Trucking, Los Angeles City Express, Oilfields Trucking Company, Qwikway Trucking Co., Rozay's Transfer, Valley Spreader Co., Victorville-Barstow Truck Line, and West Coast Warehouse Corporation; Joel Wallace, for Wallace Transport; Dwight Willard, Attorney at Law, for The Osborne Group, Inc.; G. Mackson Hemphill, for Rapid Radial Transport, Inc.; Gilbert E. Somera, for J. C. Trucking; Carr, Smulyan & Hartman, by George M. Carr, Attorney at Law, for Imperial Drayage Co.; Murchison & Davis, by Donald Murchison, Attorney at Law, for Airway Trucking Co., Auto Fast Freight, Inc., Bob's Delivery Service, Desert Empire Express, King Delivery, Inc., Kenner Trucking Service, Inc., Roy Miller Freight Lines, Direct Motor Transport, Inc., G&H Transportation, Inc., G. I. Trucking Co., Inland Freight Lines, Penguin Trucking Co., Inc., Presto Delivery Service, Inc., Ram Freightways, Inc., Smith Transportation Co., and Williams Transportation Inc.; Sheldon Mitchell & Associates, by Sheldon Mitchell and George

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Selko, for Ge-Be Freight Lines; Milton W. Flack, Attorney at Law, for MGM Transportation Co., Inc., Brothers Transportation, Inc., TRK Trans, Inc., Servicecraft Corp., W. W. Lynch, Inc., B. B. D. Transportation, Burton Truck & Transfer Co., Specialized Cartage, Langdon Transportation, Inc., S&H Truck Lines, Cool Transportation, and Simon Trucking; Charles E. Goacher, for DiSalvo Trucking Co.; Dennis G. Moran, for Moran Moving & Storage; Hillel Sharlin, for ABC Messenger Service, Inc.; Lowell E. Hoskins, for 1-2-3 Messenger Service; and Dennis G. Moran and L. Filipovich, for themselves.

Interested Parties: J. C. Kaspar and H. W. Hughes, for California Trucking Association; E. O. Blackman, for Dump Truck Owners Association; Graham & James, by David H. Renton, David J. Marchant, and Jerry J. Suich, Attorneys at Law, for California Carriers Association; James R. Foote and Thomas E. Rutherford, for Associated Independent Owner Operators, Inc.; Thomas J. Hays, for California Moving & Storage Association; Robert E. Jesinger and Albert Brundage, Attorneys at Law, for California Teamsters Public Affairs Council and Western Conference of Teamsters; Jess J. Butcher, for California Manufacturers Association, Thomas R. Dwyer and Andrew J. Skaff, Attorney at Law, for Delta Lines, Inc.; Tuttle and Taylor, by Ronald C. Peterson and Lisa Mayes, Attorneys at Law, for Sunkist Growers, Inc., Blue Anchor, Inc., Bud Antle, Inc., California-Arizona Citrus League, and Dried Fruit Association of California; Captain John E. Law, for Department of California Highway Patrol; Charles Kagay, Attorney at Law, for Office of Attorney General; Robert A. Kormel, for Pacific Gas and Electric Co.; Joseph H. Alvarez, for Department of General Services, State of California; Richard Austin, for Kaiser Cement & Gypsum Corp.; E. J. Bertana, for Lone Star Industries, Inc.; J. R. Cedarblade, for Aggregates and Concrete Association of Northern California, Inc.; Peter J. Coyle, for Bethlehem Steel Corp.; R. A. Dand, for Traffic Managers Conference of California and Norris Industries; Paul Duncan, Bob Williams, and Frank H. Martinez for Teamsters Local No. 287; H. W. Endicott, for Chevron, U.S.A., Inc.; Gordon G. Gale, for The Clorox Co.; Karl L. Mallard, for C&H Sugar; Ralph O. Hubbard and Allen R. Crown, Attorney at Law, for California Farm Bureau Federation; Vaughan, Paul & Lyons, by John G. Lyons, Attorney at Law, for California Fertilizer Association and California Forest Protective Association; William D. Maver, for Del Monte Corp.; Tad Muraoka, for IBM Corp.; M. J. Nicolaus, for Western Motor Tariff Bureau, Inc.; Edward Hegarty, Attorney at Law, for Loughran & Hegarty; Harry Phelan, for California Asphalt Pavement Association; Daniel Quan, for Safeway Stores, Inc.; Marion I. Quesenbery, Attorney at Law, for Western Growers Association; John T. Reed and Marvin Handler, Attorneys at Law, for Pacific Coast Tariff Bureau;

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Don Reining, for Southern California Rock Products Association; Robert F. Schafer, for Duracell Products, Co.; Milton W. Flack, Attorney at Law, and Don Shields, for Highway Carriers Association; Richard I. Siudzinski, for Kraft, Inc.; Ralph J. Staunto, for County of Los Angeles; Scott Wilcott, Attorney at Law, for Concrock Co.; Loughran & Hegarty, by Frank Loughran, Attorney at Law, for California Wine Institute; Asa Button, for Spreckels Sugar Division; Donald W. Dowlearn, for California Department of Transportation; Les August, for The Industrial Office; Thomas J. Hale, for California Grape & Tree Fruit League; and Helen Dalby, James E. Dellamaggiore, E. H. Griffiths, Frank Spellman, Robert Turner, J. Grant Vincent, and Gene Carmody, for themselves.

Commission Staff: James J. Cherry and James T. Quinn, Attorneys at Law, and T. H. Peceimer.

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ENTRY STANDARD

<u>Permit</u>	<u>New Permits</u>		<u>Transfer Permits</u>		
	<u>Present Standards</u>	<u>PUC Section</u>	<u>Present Standards</u>	<u>PUC Section</u>	<u>Adopted Standards</u>
Highway Contract Carrier	Petition	3572	Petition	3574	Financial responsibility
	Financial responsibility				
	Residency		Residency		
	PL & PD insurance	3631	PL & PD insurance	3631	
	Tariffs	3737	Tariffs	3737	
	Application fee	5004	Application fee	5004	
Livestock Carrier	Application	3584	Application	3585	
	Financial responsibility		Financial responsibility		
	Residency		Residency		
	PL & PD insurance	3631	PL & PD insurance	3631	
	Tariffs	3737	Tariffs	3737	
	Application fee	5004	Application fee	5004	
Petroleum Contract Carrier	Application	3603			Application
	Reasonable financial responsibility	3604			Reasonable financial responsibility

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ENTRY STANDARDS

<u>Permit</u>	<u>New Permits</u>		<u>Transfer Permits</u>		
	<u>Present Standards</u>	<u>PUC Section</u>	<u>Present Standards</u>	<u>PUC Section</u>	<u>Adopted Standards</u>
Petroleum Contract Carrier	Ability	3604			Ability
	Residency				Residency
	PL & PD insurance	3631	PL & PD insurance	3631	
	Tariffs	3737	Tariffs	3737	
	Application fee	5004	Application fee	5004	
Dump Truck Carrier	Application	3612	Application	3614	
	Fit and proper person	3613			Fit and proper person
	Sufficient knowledge				Sufficient knowledge
	Financial ability				Financial ability
	Not endanger safety of public				
	Not interfere with public use of public highways				
	Not impair condition or maintenance of public high- ways				

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ENTRY STANDARDS

<u>Permit</u>	<u>New Permits</u>		<u>Transfer Permits</u>	
	<u>Present Standards</u>	<u>PUC Section</u>	<u>Present Standards</u>	<u>PUC Section</u> <u>Adopted Standards</u>
Dump Truck Carrier	Not unneces- sarily burden public high ways Necessary to serve public Not impair ability of existing per- mitted dump truck carriers to provide adequate service at lowest pos- sible reason- able rates Residency	 3613		
	PL & PD insurance	3631	PL & PD insurance	3631
	Tariffs	3737	Tariffs	3737
	Application fee	5004	Application fee	5004
Cement Contract Carrier	Application	3622		Application
	Fit and proper person	3623		Fit and proper person

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ENTRY STANDARDS

<u>Permit</u>	<u>New Permits</u>		<u>Transfer Permits</u>	
	<u>Present Standards</u>	<u>PUC Section</u>	<u>Present Standards</u>	<u>PUC Section</u> <u>Adopted Standards</u>
Cement Contract Carrier	<p>Sufficient operating and financial ability</p> <p>Not endanger safety of public</p> <p>Not interfere with public use of public highways</p> <p>Not impair condition or maintenance of public highways</p> <p>Not unnecessarily burden public highways</p> <p>Not impair ability of existing permitted cement contract carriers or certificated cement carriers to provide adequate services at lowest possible reasonable rates</p>	3623		Sufficient operating and financial ability

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ENTRY STANDARDS

<u>Permit</u>	<u>New Permits</u>		<u>Transfer Permits</u>	
	<u>Present Standards</u>	<u>PUC Section</u>	<u>Present Standards</u>	<u>PUC Section</u> <u>Adopted Standards</u>
Cement Contract Carrier	Residency) 3623		Residency
	PL & PD insurance	3631	PL & PD insurance	3631
	Tariffs	3737	Tariffs	3737
	Application fee	5004	Application fee	5004
Household Goods Carrier	Application	5134		Application
	Ability)	Ability)
	Reasonable financial responsibility)	Reasonable financial responsibility)
	Knowledge and ability by examination	5135	Knowledge and ability by examination	5284.5
	Integrity)	Integrity)
	Financial resources)	Financial resources)
	Residency)	Residency)
	Tariffs	3737	Tariffs	3737
	Application fee	5136	Application fee	5136
	PL & PD insurance) 5161	PL & PD insurance) 5161

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ENTRY STANDARDS

<u>Permit</u>	<u>New Permits</u>		<u>Transfer Permits</u>	
	<u>Present Standards</u>	<u>PUC Section</u>	<u>Present Standards</u>	<u>PUC Section</u> <u>Adopted Standards</u>
Household Goods Carrier	Cargo insurance }	5161	Cargo insurance }	5161
Agricultural Carrier	Application }		Application }	
	Financial responsibility }	3584	Financial responsibility }	3585
	Residency }		Residency }	
	PL & PD insurance	3631	PL & PD insurance	3631
	Tariffs	3737	Tariffs	3737
	Application fee	5004	Application fee	5004

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PART 111
FINANCIAL RESPONSIBILITY

1. Complete Form 706F-1 (Balance Sheet), Form 706F-2 (Required Capital Worksheet), Form 706F-3 (Projected Profit and Loss Statement) and attach to the application.
2. Give name and address of bank (or banks) or other financial institutions familiar with applicant's financial position.

-
3. The financial information you submit may be verified by the Commission staff. Please complete Form 706G and attach to the application.

Each applicant by whom this application is signed certify (or declare) under penalty of perjury that the representations appearing in said application and in any PUC forms attached thereto (including any accompanying financial schedules, statements or projections) are, to the best of his knowledge and belief, true, correct and complete, based on all the information required to be included therein, of which he has any knowledge, and these representations are made in good faith.

Date _____

Signature of Applicant(s)

If applicant is a corporation:

Signature and Title of Corporate Officer

NOTICE

The filing of this application does not in itself constitute authority to engage in for-hire trucking operations. Any for-hire operations conducted prior to Commission authorization are unlawful and may subject applicant to fine and imprisonment.

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BALANCE SHEET

Date

<u>Assets</u>	<u>Liabilities & Net Worth</u>
Cash (on hand and in bank) \$ _____	Accounts Payable \$ _____
Accounts Receivable _____	Notes Payable _____
Notes Receivable _____	Balance Due on Motor Equipment _____
Inventory of Materials & Supplies _____	Other Liabilities _____
Other Current Assets (i.e., U.S. Saving Bonds, etc.) _____	Total Liabilities \$ _____
Value of Land & Buildings _____	Net Worth \$ _____
Value of Truck & Other Equipment _____	
Value of Shop Equipment _____	
Miscellaneous _____	
Total Assets \$ _____	Total Liabilities & Net Worth \$ _____

FORTY-FIVE DAYS REQUIRED WORKING CAPITAL WORKSHEET

Line No.	Item	Amount
<u>PART I</u>		
1	Total available cash and/or current liquid assets readily convertible to cash	\$ _____
<u>EXPENSES</u>		
<u>PART II</u>		
A. <u>Labor (employees, subhaulers, etc.)</u>		
2	Wages or Salaries	_____
3	Health & Welfare Payments	_____
4	Pension Payments	_____
5	Workers Compensation Insurance	_____
6	Unemployment Insurance	_____
7	Social Security Payments	_____
8	Other (specify) _____	_____
9	Subtotal (Lines 2 thru 8)	_____
B. <u>Equipment Fixed Expense</u>		
10	Monthly Payment (purchase, lease, etc.)	_____
11	Down Payment (Leave blank if paid)	_____
12	Insurance (PL, PD and Material Damage)	_____
13	Registration and License Fees	_____
14	Weight Fees	_____
15	Highway Use Taxes	_____
16	Other (specify) _____	_____
17	Subtotal (Lines 10 thru 16)	_____
C. <u>Equipment Operating Expenses</u>		
18	Fuel (Source: Golden Rod Report, 521 Series)	_____
19	Cost Per Gallon	_____
20	Miles Per Gallon	_____
21	Cost Per Mile (Line 19 ÷ Line 20)	_____
22	Oil (Source: Golden Rod Report, 521 Series)	_____
23	Cost Per Quart	_____
24	Miles Per Quart	_____
25	Cost Per Mile (Line 23 ÷ Line 24)	_____
26	Subtotal (Line 21 + Line 25)	_____
27	Estimated Miles	_____
28	Estimated Operating Expense (Line 26 x Line 27)	_____
D. <u>Overhead Expenses</u>		
29	Supplies (Stationery, Furniture, etc.)	_____
30	Utilities (including installation charges)	_____
31	Office or Terminal (rents, payments, leases, etc.)	_____
32	Other (specify) _____	_____
33	Subtotal (Lines 29 thru 32)	_____
E. <u>Contingency Expenses</u>		
34	Deductible Portion of Insurance	_____
35	Other (specify) _____	_____
36	Subtotal (Lines 34 and 35)	_____
37	Total Required Working Capital (Lines 9, 17, 28, 33, and 36)	_____
(Line 37 should be equal to or less than Line 1.)		

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CERTIFICATION OF SUPPORT OF APPLICATION
FOR HIGHWAY CARRIER PERMIT

TO THE CALIFORNIA PUBLIC UTILITIES COMMISSION:

The undersigned states that he, or the corporation, association, or partnership which he represents, agrees to support the application filed by: _____ for a

(Name of Applicant)

(Name of type of permit applied for)

Applicant's proposed service is supported as follows.

1. Commodities: _____

(List commodities to be shipped or received)

2. Points and/or areas: _____

(List points and areas to be served)

3. Total volume of freight to be shipped or received in first year. _____

(Indicate by usual size of shipment per commodity)

4. Accessorial services to be provided: _____

(Describe)

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5. Rates and charges to be paid for:

(a) Transportation of commodities:

(b) Accessorial services:

By signing and submitting the Certificate of Support, the undersigned individually and on behalf of the corporation, association, or partnership he represents, certifies to the Commission that he intends to employ the services of applicant.

By signing this Certificate of Support, the undersigned certifies that he is aware he may be called upon to testify on applicant's behalf at a public hearing to verify his intention to utilize applicant's service.

Should the support for this application be withdrawn or changed in whole or in part, the undersigned agrees immediately to so inform the California Public Utilities Commission, State Building, San Francisco, CA 94102. ✓

The undersigned hereby states that he is duly qualified and authorized to make this certification of support.

Dated _____, 19 _____

(Firm, corporation, association, partnership, etc., represented, if any.)

(Signature)

(Title)

(Typed Name)

(Complete Address)

RELEASE OF INFORMATION AUTHORIZATION
FOR HIGHWAY CARRIER PERMIT APPLICATION

The undersigned authorizes the California Public Utilities Commission to obtain such verification or further information as it may require concerning information on financial condition set forth in the application filed by the undersigned for highway carrier permit operating authority. As regards the verification of bank records, such verification shall be limited to the particular accounts and/or items listed below by the applicant and shall be limited to a period of time commencing on the date of the signing of the application and ending on the date of the granting or the rejection of the application; but in no event shall the period for the verification of bank records extend beyond 60 days from the date of the signing of the application. I understand that I have the right to revoke this authorization at any time. The applicant agrees that any documents submitted for the purpose of demonstrating financial condition shall remain with the Commission whether or not the permit is granted.

Date _____

Signature of Applicant(s)

Bank Records:

CONSENT TO OBTAIN INFORMATION

(To be signed by non-applicant spouse of married applicant)

I authorize the Public Utilities Commission to obtain whatever information about my financial condition that it considers necessary and appropriate for purposes of evaluating the financial condition of my spouse as an applicant for highway carrier permit operating authority. As regards the verification of bank records, my authorization is limited to the accounts and/or items listed below and is limited to a period of time commencing on the date of the signing of the application and ending on the date of the granting or the rejection of the application; but in no event shall the period for the verification of bank records extend beyond 60 days from the date of the signing of the application. I understand that I have the right to revoke this authorization at any time.

Date _____

Signature of Spouse

Bank Records:

C. 10278 - D.
Investigation into Entry Requirements for Trucking

COMMISSIONER WILLIAM SYMONS, JR., Dissenting

The Commission's big "reform" in trucking has come full circle. The hoopla about deregulation and more competition heard in September of 1975 (when Case 9963 was launched) appears forgotten in the dust. Instead of promoting free competition, today's order adds needless restrictions on new entry into trucking. It reveals a commission more protective of the interests of the "haves" in the trucking industry than of the interests of the public at large.

Today's decision indicates the first step toward adopting the national system of trucking regulation in California, and ends our state's decades old tradition of open entry into trucking. I dissent to both features of the order.

It totally escapes me how this agency can pattern itself after the Interstate Commerce Commission. Critics from Ralph Nader on the left to Milton Friedman on the right have condemned the operations of that agency as a monstrous imposition on the economic well-being of every consumer in the United States. The agency's sole defenders are the Teamsters, the American Trucking Association, and an occasional academician in the employ of one or the other. That fact alone shows the true worth of federal regulation.

More fundamentally, I am at a loss to understand how this Commission can move to restrict entry at a time when the Federal government and other states are at long last learning the enormous benefits -- to consumer and corporation alike -- of open entry.

After decades of operating a cartel on behalf of the airlines, for example, the Civil Aeronautics Board is finally moving to loosen entry. Those moves have brought untold benefits to the American consumer, and increased airline profits. Our Commission has endorsed the C.A.B.'s efforts. How can we then move in the opposite direction with intrastate trucking?

As one might expect, the justifications for restricting entry contained in today's order are flimsy. We are informed, for example, that the discontinuance rate for California truckers -- 15% -- is "high".^{1/} According to Dun and Bradstreet, however, the overall failure rate for new businesses is 50%. The Commission might better spend its time investigating why the failure rate among California truckers is so low!

We are also informed on page 11 that

"Our present implementation of the statutory entry standard of financial responsibility is failing to screen out those applicants seeking to commence permitted highway carrier service without current liquid assets to sustain the proposed operations, especially during the initial start-up period and prior to the anticipated flow of compensating operating revenues". (Emphasis added)

The evidence belies this concern. There is no special evidence of problems with the start-up period. As this excerpt from the staff's Exhibit 2 shows, there is no especially high incidence of first year failures.

^{1/}Majority Decision p. 11. It should be noted that the "discontinuance rate" is a composite: permits transferred as well as permits revoked. In 1976, the ratio of revocations to total carriers was 6.6%. (Exhibit 2, p. 16)

"Carriers Revoked and Period Licensed
Calendar Years 1967 through 1976^{2/}

Period Licensed	1967	...	1976	<u>/cumulative/</u> %
Under 1 year	472	...	220	17.61
Between 1 and 2 years	622	...	264	21.14
Between 2 and 3 years	417	...	181	14.49
Between 3 and 4 years	283	...	138	11.05
Between 4 and 5 years	199	...	72	5.77
Over 5 years	<u>750</u>	...	<u>374</u>	<u>29.94</u>
Total Revocations	2,742	...	1,249	100%"

Nor does the new requirement of liquid capital equivalent to 45 days of operating expenses seem correlated to any facts of operation. To premise our regulation on the assumption that the trucker will receive not one cent for his services for 45 days is absurd. This is particularly so, in light of our enforcement of a Credit Rule on trucking which requires cash transactions as the norm, and only provides for 7 days credit. What distresses me is that the new steepness in entry provisions appears really designed to achieve objective one on page 14: "to control the number of carriers in the specified transportation field". A new financial barrier of \$10,000 to \$20,000 will disadvantage the poor. Moreover, in meeting this burden, the applicant may not list non-liquid items, such as a house. Apparently, the PUC wishes to insure that trucking will in the future become a gentleman's avocation.

^{2/}Exhibit 2, p. 16.

How important is the amount of capital a person has when entering trucking? Today's order tries to establish that it is very important. The record shows otherwise.

In preparing for Case 10278, the staff did a study which attempted to correlate the amount of capital at the disposal of a new motor carrier, and the likelihood of that firm's surviving.

I quote from that study's conclusions:

"There is no correlation between the amounts of working capital or equity in operating equipment, and a carrier's propensity to fail or succeed Any attempt to correlate specific attributes and the propensity to fail or succeed is a simplification of the problem."

I would also like to quote from the testimony of a shipper:

"The collective experience of the parties is that financial responsibility requirements do not necessarily have any relationship to the adequacy of the service provided by highway carriers. Some very reliable carriers utilized by the Parties are relatively small and have at times experienced financial difficulties, yet these carriers provide adequate service. On the other hand, some larger carriers, which appear on paper to be financially substantial, occasionally provide inadequate service. The Parties believe that there is no way to specify any meaningful financial responsibility requirements and, therefore, recommend that none be imposed."

I am not surprised by these findings. Trucking has long been a business in which a man short on money but long on skill and energy might make his mark. In California, however, this will no longer be the case. Today's order will extend the dead hand of bureaucracy into the financial records of would-be truckers. Here, the Commission will enforce an unreasonable and capricious financial standard. In doing so, it will be oblivious to the way in which many of the largest and most significant companies in existence today began: on a shoestring in someone's basement. Anyone who looked at the books

of those concerns in their formative years would have promptly concluded that they were without significant financial futures. Such a fatuous and self-satisfied analysis would have been wrong, however, because there is no provision in double-account bookkeeping for the most crucial factor of all: entrepreneurial skill. I regret that today's order will result in a significant diminution of that spirit among California's truckers.

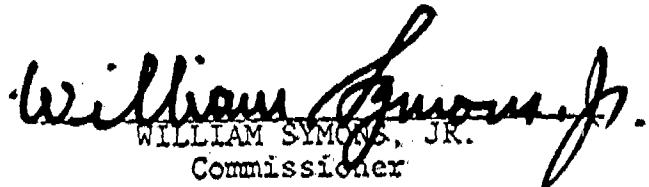
I also oppose the requirement that a would-be carrier have a commitment from a shipper to use his services prior to receiving a permit. This innocuous-looking requirement is another unnecessary barrier. Imagine how many barbers would be licensed if the state began to require applicants to pre-secure commitments on whose hair one would cut. The form to be signed by the potential shipper also signals him that the shipper may get entangled. That is, he may have to appear and testify in the applicant's behalf. Such an appearance may require the shipper to travel dozens, if not hundreds of miles, and could cost him several hours, if not days, of work time. Why should a shipper expose himself to such a possibility when there are 20,000 established carriers for whom he need not do this? Clearly, the effect of this requirement is to further encourage that few, if any, permits will be issued.

C. 10278 - D.

It is time for the Commission to take a fresh look at its "reregulation" program. Case 9963 got us nowhere. Now 9963 has been replaced by a scattering of cases which are proceeding in a confused and disorganized manner. How can we limit entry on the narrow and flimsy grounds presented to us today? How can we pre-decide entry before we decide about rate filings? Further, how can we decide Petition 884 with the question of rate bureaus unresolved? And, above all, what conceivable advantage does the discredited national system hold for California? These questions must be answered, but have been shunted aside by the Commission majority as if they didn't matter.

These three years of turmoil have reaffirmed in my mind that California's best policy toward trucking would be the retention of open entry, and the restructuring of MRT's so that rather than the going rates they evolve into genuine minimum rates.

San Francisco, California
June 13, 1978


WILLIAM SIMON, JR.
Commissioner