

Decision No. 89730 DEC 12 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation)
for the purpose of considering and)
determining minimum rates for)
transportation of any and all)
commodities statewide including,)
but not limited to, those rates)
which are provided in Minimum Rate)
Tariff 2 and the revisions or)
reissues thereof.)

) Case No. 5432, OSH 957
) (Filed April 12, 1977)

) Case No. 5439, OSH 310
) Case No. 5441, OSH 392
) Case No. 5603, OSH 208
) Case No. 7783, OSH 156
) (Filed April 12, 1977)

) Case No. 5330, OSH 100
) Case No. 5432, OSH 958
) (Filed April 12, 1977)

) Case No. 5433, OSH 67
) Case No. 5432, OSH 959
) Case No. 5438, OSH 116
) Case No. 7857, OSH 159
) (Filed April 12, 1977)

) Case No. 5436, OSH 244
) Case No. 5432, OSH 960
) Case No. 6008, OSH 36
) (Filed April 12, 1977)

And Related Matters.

) Case No. 5437, OSH 292
) Case No. 9819, OSH 22
) Case No. 9820, OSH 8
) Case No. 5432, OSH 961
) (Filed April 12, 1977)

) Case No. 5440, OSH 103
) Case No. 5432, OSH 962
) (Filed April 12, 1977)

) Case No. 5604, OSH 59
) Case No. 5432, OSH 963
) (Filed April 12, 1977)

) Case No. 8808, OSH 38
) (Filed February 3, 1977)

) Case No. 8808, OSH 42
) Case No. 5432, OSH 964 *WJ*
) (Filed April 12, 1977)

OPINION AND ORDER
DENYING REHEARING AND MODIFYING DECISION NO. 89575

The Commission has received several Petitions for Rehearing and numerous letters which were treated as Petitions for Rehearing of Decision 89575 pursuant to our letter of October 31, 1978 which accompanied copies of the decision sent to all carriers. Petitions and letters which were timely filed pursuant to our invitation are listed in Appendix A to this decision.

Although many of the parties filing lack standing to petition for rehearing, the Commission has considered each and every allegation of each of the letters and petitions timely filed and finds that no good cause for rehearing has been shown. The petitions have, however, identified several areas of the decision which should be clarified and several areas which should be modified.

The petitions display considerable confusion and controversy with respect to our discussion of subhauling and Appendix B to Decision 89575 which is a table displaying the extent of cross-authority subhauling permitted by the decision. Although the practice of subhauling is under more extensive consideration in Case No. 10278, we felt compelled to provide some guidance to carriers who may be affected by resolution of subhauling issues, in order to permit them to reach informed decisions regarding the conversion of their radial permits under SB 860. Several petitions objected to Conclusion 28, in which we stated that "further decisions in Case No. 10278 may further liberalize, but will not further restrict, subhauling between carriers".

This conclusion went beyond our intent. The determination of issues reflected in Appendix B was intended only to provide guidance to carriers based upon the record of the proceeding and our knowledge of, and historical experience with, the practice of subhauling. It was not intended to preclude further analysis or consideration of such issues in the broader context of Case 10278. Accordingly, Conclusion 28 should be modified to read:

"Cross authority subhauling will be further
Considered in the context of Case No. 10278."

This change should also be reflected at mimeo pages 24 and 25, as indicated in the attached Order.

At mimeo page 25, we expressed our intent that issues involving the practice of subhauling, not addressed in the discussion or Appendix B to the decision, be deferred entirely to Case 10278. We did not intend to prohibit cross authority subhauling upon which we made no finding. Accordingly, the footnote to Appendix B, reading "BLANK SQUARES = NO" should be deleted.

Appendix B should also be modified to include the category "cement contract" which was inadvertently omitted from both axes.

Carriers interested in subhaul issues can protect their interests pending our decision in Case 10278 by converting their radial permit into both a common carrier certificate and a contract carrier permit. In addition, carriers qualifying should also file for agricultural authority.

Several petitions requested that various operations, in addition to heavy hauling, be designated as "specialized carriage inherently contract in nature". Parcel delivery, vacuum tank, and

mobile home transportation were among the operations for which such petitions were received.

As we noted at mimeo page 18, the delineation of carrier operations as contract or common in nature generally must be made on a case by case basis upon the peculiar facts surrounding each individual carrier's operations. Some segments of the transportation industry are, however, susceptible to generic consideration. Our knowledge of, and experience with, heavy hauling has demonstrated both the unique circumstances surrounding heavy hauling and the fact that this segment could be considered generically. We recognized at mimeo page 19 that there may be other segments of the industry which may also be considered in this manner. We do not, however, have sufficient evidence before us to make any such findings in this proceeding. Until such evidence is presented, carriers must continue to assess their own operations in light of their individual operating circumstances and characteristics.

A number of petitions requested that we reverse our position that radial carriers whose authority was in suspension at any time from July 1, 1978 to the date of filing are ineligible for conversion privileges under SB 860. The latest data available indicates that this will affect a substantial number of carriers. In excess of 1,000 radial permits were suspended between July 1 and the end of October. In all probability, more have been suspended since then. Some of these permits were suspended voluntarily at the specific request of the carrier. Others were suspended involuntarily for a variety of reasons

including failure to maintain adequate insurance and failure to remit quarterly fees. We do not doubt that some carriers have had their authority suspended for reasons entirely beyond their control and will be denied conversion privileges under Decision 89575 as a result. We are sympathetic with the plight of these carriers and have found no shortage of equitable reasons in their petitions to grant the relief they have requested. The problem they have presented is not, however, susceptible to administrative resolution. We are constrained by the unfortunate language of the statute which fails to recognize that the ordinary course of business for many perfectly legitimate trucking companies is not always "continuous". The statute, both in Section 1063.5 and Section 3572.5, requires that one have been in "bona fide operations as a radial highway common carrier on July 1, 1978, and continuously thereafter to date of filing" in order to be eligible for conversion to either common or contract authority. No carrier, whose operating authority was suspended for any period of time between July and the date of filing, could have been in "bona fide operations ... continuously" during that period. If operations were discontinued during the period authority was suspended, the operations were not "continuous". If operations were continued despite the suspension of operating authority, then such operations would not have been "bona fide". Thus, the clear language of the statute denies such carriers conversion privileges.

Carriers who were in suspension at some period of time between July 1, 1978, and the date of filing are not wholly without a remedy, however. We encourage all affected carriers to apply for authority

either under Public Utilities Code, Section 1063, for traditional common carrier authority, or under Section 3572, for traditional contract carrier authority. Some carriers may be able to continue their operations under one of these authorities despite their loss of conversion privileges under SB 860. We also encourage affected carriers to seek legislatively those privileges which we are unable to provide administratively. *The Commission will support these requests*
Advised by the California Trucking Association
Revised by the Commission

Several parties requested corrections and additions to our list of commodities requiring an agricultural carrier permit for transportation. This list was reproduced as Appendix F to Decision 89575. After reviewing these requests, we conclude that the following commodities should be added: 1) "Grain NOI"; 2) "Milk, cream NOI"; 3) "Kiwi (Chinese gooseberry)"; 4) "Nuts, edible, NOI in shell or field shelled"; 5) "Nut hulls or shells, NOI"; and 6) "Grass seed NOI". "Sugar, beet or cane, raw" is a processed agricultural product and should be deleted from the list.

In addition to the changes discussed above, the attached Order provides for the correction of the following inadvertent errors. The issue date of all 1063.5 certificates should be October 1, 1979, rather than July 1, 1979, as was indicated on page 13, and in Finding 3c. Section 1063.5 tariffs should be effective not earlier than October 1, 1979. Carriers should be free to make their tariffs effective after October 1, even though this may preclude operation under their converted authority for a period of time. Lastly, reference to AB 1559 should be added at mimeo page 16 to put cement

contract carriers on notice that they are required to file written contracts with the Commission pursuant to this separate legislation.

IT IS THEREFORE ORDERED THAT:

1. Conclusion 28 shall be amended to read:

Cross authority subhauling will be further considered in the context of Case No. 10278.

2. Finding 17 shall be amended to read:

We find that the needs of commerce and the public interest appear to require cross authority subhauling at least to the extent indicated in the table attached as Appendix B to this decision.

3. The following paragraph shall be substituted in place of the last paragraph on page 24:

We feel compelled, however, to provide some guidance to those carriers who will be affected by the resolution of this issue. The needs of commerce and the public interest appear to require cross operating authority subhauling at least to the extent indicated in the table attached as Appendix B to this decision.

4. The following paragraph shall be substituted in place of the first full paragraph on page 25:

In view of the considerable controversy surrounding these issues, and the fact that they are in many respects unrelated to the implementation of SB 860, we feel it appropriate to defer final resolution of these issues to the more fully developed record

in Case 10278, our general investigation into the practice of subhauling. Carriers who feel their conversion decision under SB 860 may be affected by our resolution of these subhauling issues should preserve their options by converting their radial permits into both common and contract authority. In addition, carriers qualifying should also file for agricultural authority.

5. Appendix B to this decision shall be substituted in place of Appendix B to Decision 89575.

6. The following commodities shall be added to Appendix F to Decision 89575:

Grain NOI

Milk, cream NOI

Kiwi, (Chinese gooseberry)

Nuts, edible, NOI in shell or field shelled

Nut hulls or shells, NOI

Grass seed NOI

7. "Sugar, beet or cane, raw" shall be deleted from Appendix F to Decision 89575.

8. The second to the last sentence in the first paragraph on page 13 shall be amended to read:

All Section 1063.5 certificates will have an issue date of October 1, 1979, and all tariffs must be made effective not earlier than October 1, 1979.

9. Finding 3c shall be amended to read:

All certificates will have an issue date of October 1, 1979.

10. Finding 3f. shall be amended to read:

All Section 1063.5 tariffs must be made effective not earlier than October 1, 1979.

11. The following footnote shall be referenced to the final paragraph on page 16, and added to page 16:

5a. Although SB 860 did not affect cement contract carriers, AB 1559 enacted as Chapter 1373, Statutes of 1978, requires cement contract carriers to file written contracts with the Commission in essentially the same manner as we are requiring of highway contract carriers.

12. The preceding modifications shall be made to Decision 89575 and incorporated therein.

13. Rehearing of Decision 89575 is denied.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 12 day of DECEMBER, 1978.

I dissent.

*I would grant rehearing.
William Squous Jr.*

Robert Bateman
President

Yvonne L. Stinson
Michael P. Goble
Clair J. Deibel
Commissioners

Delta Lines	Jesse House
Contractors Cargo Co.	W. S. Emerian
California Manufacturer's Assn	G. I. Trucking
James Clapp	Internatl. Harvester Credit Corp.
Associated Independent Owner	C. C. Blake
Operators	K. N. Dias
Calif. Moving and Storage Assn	R. E. Berkeley, Jr.
Charlie Collins	D. Baggs
Devine & Son Trkng	M. Cambra
W. R. Cowan Trkng	R. L. Boone
Buletta Trkng	R. N. Bertaud
William K. Brown	R. E. Brown
Jack Barnes Trkng	S. DiSalvo
Applegate Drayage	J. Dowdall
W. K. Anderson	B. Castillo
Calif. Grain & Feed	Asbury Transp.
Churchill Trkng	P. Bonzi (P&B Trkng)
Carr's Mobile Home Towing	R. Cali & Bro.
Acme Transportation	R. Dominguez
Harrison Allen Trkng	V. Bagola
Ness Daher	J. Cooper
Donald F. Beach	D. O. Cowan
Ray J. Cantrell	Canners League
John Dutra	A. Bertoud
Mario DiSalvo	R. Brown
David Andros	G. Berner
Cal-Surance	C. Burrow
Brundage, Davis, etc.	L. W. Crafton
Bayview Trkng	Cummins Trkng
Calif. Cartage	B. Daily
Cal. Coast Carriers	L. Alegre
Allyn Transp. Co.	B. Cartrette
Ronald Christensen Trkng	G. Antoku
R. B. Drake Trkng	D. M. Kiplinger
C. P. Trkng	R. R. Hill
Walker Brown Trkng	K. Kahan
Di Salvo Trucking Co.	T. Hodge
Handler, Baker & Greene	M. R. Hurn
Graham & James	K. Kimbrow
Richard L. Franck	W. H. Johnson
Highway Carrier Assn	T. W. Hall
Hansen Transp.	Earth Cargo, Inc.
Flanders Trkng	R. Guzman
John J. Hibbard	W. Gonzales
Forty-Niner Sand & Gravel	E. L. Hembree
Ken House Trucking	K. J. Trkng (James P. Stewart)
Merrill N. Farr	Gallo & Sons
Jerry Hansen Trkng	J. M. Fonseca
G. V. Harold	T. L. Jaskolski
Hiles Trkng	V. L. Hampton
Golden State Tariff Bureau	C. T. Hampton
Jack's Trkng	Spangler Trkng

Latham & Watkins	Newman Trkng.
Mello Trucking	K. L. North
Macy Movers	C. A. Mattingly
Lindeman Bros.	R. Neves
R. L. Mangrum	G. Moore
Layne Paving & Trkng.	G. E. Martin
Dennis A. Mick	R. V. Mitchell
Harry A. Moorcroft	R. H. Moore
Bill Mudge Trkng.	J. H. Murphy
Rene LaChance Trkng.	C. Pancoast
Joseph Manley	Mammoth of Calif.
Vernon Moore	T. L. Martin
Floyd Nelson, Jr. & Sons	W. Paggett
M. D. Trkng.	J. A. Marsh
Jack Lord	Manada Trkng.
Sam Miles	J. M. Mazzaferri
Wayne Mills Trans.	B. Peterson
D. A. Nelson Trkng.	B. Latimore
Mt. View Storage	W. E. Montgomery
Nielson Freight Lines	Alex McMillan
Alva Pancoast	Harold Lambert
George Lohrman Trkng.	Darrel Patterson
PMT	Harry McConnell
Pearson Trkng. & Rigging	Ted Peters
P & R Produce	Mark Lyon
Carlyle E. Patton	Richard Smith
Universal Transport System	F. B. Ryzner
Spreckels Sugar Division	F. Smith
Walter Vierra	Telfer Tanklines
Glen Wilson	T. F. Stokes
Jerry Robinson Trkng.	E. Serotsky
Ringers Truck Service	T. Tenny
Shippers Imperial	J. R. Rambo
James A. Rhoades	D. R. Fankhouser Trkng.
Woodbury Trucking	D. L. Riddle
George White Trkng.	L. R. Rorabeck
Don Robison	K. W. Wiley
Vineyard Trucking	G. E. Singleton
Western Tariff Service	Sterling Transit
Smith Transportation	Trans Sierra Transpt.
Turner & Franzoia	P. Wesmorian
Touchatt Trkng.	R. R. W. Trkng.
Viviano Trkng.	F. Spellman
Radonich Bros.	I. M. Suehla
Al Sample Trkng.	Zeiber Trkng.
Albert J. Tessitone	R. G. Pollex
William Woods	J. F. Rich
Gagron Willis	J. N. Thomas

Jesse Tippetts
Trucking Bill & Becky
Elizabeth Yardley
Seven Seas Service
System 99
C. H. Thompson Trkng.
Willig Freight Lines
R & B & Sons, Inc.
Ben Salamoni Trucking Service
Joseph Weber
Knight Realty
Harold Frost
John Goodwin
Vernon Holt
Harrison-Nichols Co.
Floyd Hines
Robert Gains
Harold Hamil
Robert Worley

S. P. Selsman
E. R. Reichardt
S. Smith
E. J. Smith
J. C. Smith
C. A. Wheeler
J. Rodriguez
Dennie Reed & Sons
Dennis D. Yardley
James R. Morris
H. C. Handley
L. W. Forsberg
J. E. Hicks
Barbara Hart
Harrison Trucking
Kenneth Hyatt
Ralph Holwick
Joe N. Furtado
Malva Smith

APPENDIX B

CROSS AUTHORITY SUBHAUL GUIDELINES

PRIME CARRIER SUB-HAULER	HIGHWAY COMMON	PETROLEUM IRREGULAR ROUTE	CONTRACT	CEMENT CONTRACT	CEMENT COMMON	AGRICULTURAL	SEASONAL AGRICULTURAL	LIVESTOCK	SEASONAL LIVESTOCK	DUMP TRUCK	PETROLEUM CONTRACT	HOUSEHOLD GOODS
HIGHWAY COMMON	Yes					Yes						
PETROLEUM IRREGULAR ROUTE		Yes				Yes						
CONTRACT	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
CEMENT CONTRACT				Yes		Yes						
CEMENT COMMON					Yes	Yes						
AGRICULTURAL						Yes						
SEASONAL AGRICULTURAL						Yes*	Yes*					
LIVESTOCK						Yes		Yes				
SEASONAL LIVESTOCK						Yes		Yes	Yes			
DUMP TRUCK						Yes				Yes		
PETROLEUM CONTRACT						Yes					Yes	
HOUSEHOLD GOODS						Yes						Yes

*Subhauling limited to unprocessed agricultural commodities.