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Decision No. 91247 JAN 15 1980

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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 (Phase II - Topics 5 & 6)

(For List of Appearances see Appendix A.)

THIRD INTERIM OPINION
(Phase II - Topics 5 & 6)

This is the third interim opinion in the captioned proceeding. The first and second interim opinions dealt with issues relating to the requirements to be met by applicants seeking authority to operate as a highway permit carrier, highway common carrier, or a motor transportation broker in light of recent statutory changes involving motor carrier operative rights.[1/]

The current phase of Case No. 10278 was limited to the topic of subhauling. Specific issues considered include:

a. Type of operating authority required to subhaul.

b. Whether General Order No. 102 (subhaul bond) requires revision.

c. Division of revenue between overlying or prime carriers and their subhaulers.

d. Deviation rates.

1/ Decision No. 88967 dated June 13, 1978, and Decision No. 89201 dated August 8, 1978, explain the background of this proceeding and the actions taken to this point.

Ten days of public hearing in Phase II (Topics 5 & 6) of Case No. 10278 were held in San Francisco and Los Angeles in the period between October 17, 1978 and November 9, 1978 and at San Francisco on February 7, 8 and 9, 1979. This phase of Case No. 10278 was submitted subject to the filing of concurrent briefs on March 16, 1979.[2/]

Evidence in this phase was presented by four members of the staff of the Commission's Transportation Division, by representatives of the Western Conference of Teamsters (Teamsters), Traffic Managers Conference of California (Traffic Managers), California Manufacturers Association (CMA), Canners League of California (Canners), California Dump Truck Owners Association (CDTOA), California Carriers Association, and Norris Industries. Witnesses also appeared on the behalf of several individual highway carriers.

Background

Our present regulation of subhaulers, in general, is summarized in the findings set forth in Com. Inv. of the Practices of Motor Freight Carriers in Leasing of Vehicles and Subhauling (1952) 52 Cal PUC 32, at page 35:

> "1. Subhaulers, to the extent that they are subject to the direction and control of a principal carrier as to method, means and details of performing the work, under an employer-employee relationship, for the purpose and duration of that relationship are not carriers and are not subject to regulation as carriers under statutes as administered by this Commission.

2/ Briefs were filed by Western Conference of Teamsters and The California Teamsters Public Affairs Council; Associated Independent Owners-Operators, Inc.,; Donald Murchison, Esq., on behalf of 39 highway carriers (Murchison Group); Marvin Handler, Esq.; on behalf of 30 highway carriers (Handler Group); California Dump Truck Owners Association; California Manufacturers Association; California Carriers Association; Eldon Johnson, Esq.; on behalf of three highway carriers (Johnson Group); Frontier Transportation; California Trucking Association; and the Commission's Legal Division Staff.

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"2. Subhaulers who render service for a principal carrier, for a specified recompense, for a specified result, under the control of the principal as to the result of the work only and not as to the means by which such result is accomplished, are independent contractors rather than employees of carriers, and as such independent contractors are carriers under the Public Utilities Code.

"3. Independent-contractor subhaulers, being carriers under the statutes, are prohibited by the statutes from operating without the type or types of permits or certificates required for the operations which they conduct. The types of permits or certificates required by independent-contractor subhaulers depend upon the scope and nature of their operations.

"4. With an exception hereinafter provided for certain dump truck services, the existing minimum rates, rules and regulations were not designed for application by independent-contractor subhaulers, and should and will hereinafter be made specifically inapplicable to independent-contractor subhaulers."

Subsequently, the Commission issued General Order No. 102 (GO 102) setting forth rules to govern the bonding requirements set forth in Sections 1074 and 3575 of the Public Utilities Code (Code) in connection with subhauling and leasing of equipment from an employee. GO 102-F effective May 15, 1974 contains the following definitions pertinent here:

> Prime Carrier (principal or overlying carrier) means a carrier who or which contracts with a shipper to provide transportation service for the latter, but, in turn, engages the services of another carrier known as the subhauler (underlying carrier) to perform that service. The term prime carrier also includes any subhauler who engages other carriers to perform all or part of the services which each subhauler has agreed to render for a prime carrier. Such an engaged carrier is designated as a sub-subhauler and as to it, the original subhauler is a prime carrier.
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> Subhauler (underlying carrier) means any carrier who renders a service for a prime carrier (principal or overlying carrier), for a specified recompense, for a specified result, under the control of the overlying carrier as to the result of the work only and not as to the means by which such result is accomplished. This term includes sub-subhaulers in appropriate cases.

GO 102-F requires that a written subhaul agreement be executed and that the prime carrier shall pay to the subhauler (or sub-subhauler) the charges specified in the written agreement on or before the twentieth day of calendar month following the completion of the shipment. Under that General Order no carrier except a petroleum contract carrier and a household goods carrier may engage any subhauler, or sub-subhauler unless it has on file with the Commission a bond in a sum of not less than $10,000, which bond shall secure the payment of subhaulers and sub-subhaulers in accordance with the terms of the general order.

Subsequent to our order in Practices of Motor Carriers (supra), the Code was amended to provide for additional classes of operating permits, such as petroleum contract carrier, cement contractor carrier, dump truck carrier, and household goods carrier;[3/] and for specialized forms of common carrier certificates,

3/ Senate Bill 721, Chapter 821 Statutes of 1979, added in addition a separate permit class for heavy specialized carriers.

such as petroleum irregular route carrier and cement carrier. The Commission staff has consistently held, in the absence of any formal determination or policy by the Commission, that a subhauler for any class of speciality carrier described above requires the same type of operative authority as the principal carrier for whom the subhauler performs the transportation service.

More recently, Senate Bill 860 (SB 860) enacted as Chapter 840 Statutes of 1977, amended the Code to eliminate radial highway common carrier as a form of non-public utility permit carrier, and provided for the conversion of radial permits to either a highway common carrier certificate and/or a highway contract carrier permit. In addition, SB 860 established two new permit carrier classes, agricultural carrier and seasonal agricultural carrier. In implementing the provisions of those statutory changes the Commission issued Decision No. 89575 dated October 31, 1978, and Decision No. 89730 issued December 12, 1978, in Case No. 5432 (OSH 957) et al. (Certiorari denied by California Supreme Court on June 14, 1979 in SF 23970, SF 23972, SF 23973, SF 23974, SF 23975, and SF 23976.) In these decisions the Commission made certain determinations, (hereinafter described) with respect to the type of operative rights required to subhaul for other carriers.

Scope of Subhauling

The staff exhibits reveal the following background data relative to subhauling.

Exhibit 27 shows that as of December 31, 1977, there were 20,978 highway carriers holding operating authority from this Commission; 11,408 or 54.4 percent of the carriers reported that they earned revenues from subhauling in 1977, and 1,712 or 8.2 percent of the carriers reported that they engaged subhaulers in 1977. Total subhaul revenues reported in 1977 were $381.4 million, or 24.1 percent of the total intrastate gross revenues reported by all carriers in 1977. Six thousand sixty-five carriers reported that they earned all of their 1977 revenues from subhauling

and 2,251 carriers reported that they earned more than 50 percent of their 1977 revenues from subhauling. These statistics could not be disaggregated by legal class of carrier, but it was generally indicated by the staff that the largest single group of subhaulers are those engaged in dump truck operations. Exhibit 34 indicates that the amount of traffic transported by subhaulers under rate deviations is insignificant. Only 0.8 percent of total carrier revenues in the year ended March 31, 1977, was earned by owner-operator subhaulers on general commodity traffic transported under rate deviations.

Testimony of Staff Policy Witness

The Assistant Director of the Commission's Transportation Division testified as the policy witness for the staff. He stated that the regulation of subhaulers by the California Public Utilities Commission since the enactment of the Highway Carriers Act (1937) has been the subject of considerable controversy. This has resulted in several proceedings before the Commission, none of which appear to have achieved the desired objective. According to the staff, the uncertain regulatory status of subhauling in California has caused more problems than the practice itself. There never has been absolute certainty with respect to the operating authority required for performing subhauling services or the status of the carrier engaging a subhauler. All types of subhauling are lumped together for regulatory purposes, even though there is a great diversity in the practice.[4/] The lack of statutory recognition has added to the uncertainty.

4/ The witness testified that the diversity of subhauling practices range from an occasional engagement on the part of some carriers to full-time subhauling employment on the part of others. Some prime carriers employ subhaulers on an irregular basis to supplement fleet while others regularly employ a small group of subhaulers on a permanent basis, and yet others conduct their operations entirely with a subhauler supplied fleet. All of these variations have been lumped into one category under the term of subhauling.

The current staff goals with respect to subhauler regulation are to maintain an adequate and reliable pool of carriers to meet peak seasonal transportation demands, to ensure public protection through insurance and safety requirements, and to insure prompt payment to subhaulers through bonding and other requirements.

The staff recommends that regulation of subhauling be continued substantially in its present form for the following reasons: (1) there have been no significant problems attributable to the practice of subhauling or to subhaul regulation; (2) subhauling is a for-hire transportation activity which is closely integrated with other regulated transportation services; (3) subhauling eases entry into the business of highway carriage by providing a "transition" activity for the entrant during which it may solicit prime accounts; (4) regulation, especially licensing, attaches a measure of responsibility to the subhauler and an amount of reassurance to the principal carriers which engage subhaulers. The staff is of the opinion that the public interest can best be served by improved regulation to clarify the uncertainty associated with subhauling, to protect the public, and to encourage economic efficiency.

The staff policy witness stated that for the purposes of this hearing a highway carrier serving the general public should be allowed to provided transportation services entirely in its own equipment or operate as a principal carrier engaging subhaulers to perform any part of the transportation service which it does not perform itself. The sole restriction recommended by the staff is that any carrier seeking new operating authority be required to own, lease, or control at least one unit of equipment. This requirement is intended by the staff to limit the operations of "carrier-brokers", prime carriers that perform all of their operations through the use of subhaulers.

The Transportation Division is opposed to the establishment of a division of revenues between the principal carriers and subhaulers, in the absence of shipper affiliation. However, they also oppose cancellation of the existing provisions of MRT's 7-A, 10, 17-A, and 20 which now govern the division of minimum rate revenues between principal carriers and independent-contractor subhaulers. The staff cited the fact that these provisions were established based on a voluminous record developed in protracted hearings as justification for their continuation. In the staff's view, in the absence of rather severe entry limitations and restrictions upon subhauler capacity, artificially maintained price floors, or mandated divisions of revenue, in the subhaul service market would result in excess capacity which would be at cross-purposes with the full employment which is essential to the survival of independent owner-operators. Except in the case of shipper-carrier affiliations, the staff believes that no benefits would accrue to anyone as a result of the Commission's tampering with the free market pricing of these services. Nor, in the opinion of the staff, does any provision of the Code require the Commission to establish a revenue division between any principal carrier and its independent contractor subhaulers.

The staff believes that the Commission's greatest duty to the public in connection with the regulation of subhaulers would be to provide sufficient information to such carriers to enhance their chances of success in the business of motor carriage or to hasten their withdrawal. To that end, the staff policy witness recommends that the principal carriers post in their offices the payment and contract conditions they offer to prospective subhaulers, and that GO 102-F be amended to require payment to subhaulers within ten days after the completion of the transporation service.

Transportation subject to deviated rates granted in accordance with Section 3666 of the Code is the only area in which the Commission establishes revenue division requirements between principal carriers and subhaulers absent the existence of substantial entry control or shipper-carrier affilation. According to the staff policy witness, the isolation of deviated rates from other rates for the special application of imposed subhaul price controls has not served any useful purpose and should be promptly discontinued.

Legal Division Staff Position

The policy of our Legal Division as expressed in its brief is summarized below.

The Legal Division is opposed to the imposition of the proposed equipment utilization rules in any form. The concept that this Commission should force carriers to compete on the basis of service rather than compete on the basis of prices established in the market place is completely contrary to the Legal Division's view of the entire thrust of the Commission's reregulation program.[5/] Excessive service competition has worked to the detriment of the shipping public since this inefficient substitute for price competition results in inflated costs of operation for California carriers.

Any such market division or proposal to require specified units of equipment that a carrier must utilize can only result in more complex and chaotic regulation. These proposals are overbroad and impact the entire spectrum of trucking enterprise licensed by this Commission. In the Legal Division's view these recommendations serve none of the goals discussed by the transportation division witnesses and demonstrably work to the detriment of the shipping public.

5/ See Decisions 90354 (May 22, 1979) and 90663 (August 14, 1979).

With respect to whether the Commission should categorize subhaulers as "carriers," it is the view of the Legal Division that the historical practice of considering subhaulers as carriers is unnecessary and should cease. Legal Division notes no statutory requirement to regulate subhaulers and is of the opinion that a great deal of time, effort, money, and personnel could be conserved if subhaulers were freed from regulation. The Commission it notes can and should demand that overlying carriers under its jurisdiction do all of the things which the Commission believes are in the interests of the shipping public, including being fair and reasonable with respect to the employment of underlying carriers or subhaulers.

With respect to the problem raised by the Transportation Division witness concerning this Commission's efforts to place common carriers and permitted carriers on a more equal footing for purposes of competing with respect to price, the Legal Division suggests that this Commission should request that the Legislature remove all common carriers from Division 1 of the Code and place them in Division 2 of the Code. It contends highway common carriers should not be subject to the public utility obligations of such natural monopolies as telephone and energy utilities. Rather, common carriers should be provided an equal opportunity and flexibility to establish appropriate price levels in the market place. Hence, they should be regulated pursuant to the same criteria as permitted carriers - the criteria under Division 2 of the Code (covering non-utility regulated entities).

Legal states that this Commission's primary duty under the Code is to regulate the direct relationship between the shipping public and overlying carriers. Legal believes that the Commission's direct regulatory control over carrier-to-carrier relationships should be limited to situations in which there is clear public benefit resulting from the regulations. Finally, the Legal Division concluded that the Commission should only attempt to impact those "fairness" or "safety" questions which are susceptible to regulation.

Position of Other Parties

In general, the evidence adduced by parties other than the staff was limited to issues raised by the staff. Each staff proposal received support from some segments of the transportation industry and opposition from others. In general, shippers and overlying carriers opposed any substantive changes proposed by the staff with the exception of the staff proposal to broaden cross authority subhauling, which they vigorously supported. Carrier associations representing predominantly dump truck subhaulers (AIOO and CDTOA) supported proposals to place more restrictions on overlying carriers. They also supported the establishment of divisions of revenue between overlying carriers and subhaulers where such divisions do not now exist, and strongly opposed that staff recommendation to permit unlimited cross subhauling.

The evidence presented and the positions of the various parties will be further discussed, as pertinent, under separate topical headings which follow.

Cross Authority Subhauling

One of the principal purposes of this phase of Case 10278 was to review our present regulation of cross authority subhauling. The legal status of cross authority subhauling has, as the staff noted, never been very clear. This problem has been aggravated by the lack of a consistent coordinated approach to the issue by the Commission and our staff over the years.

In Decision 47663, 52, Cal PUC 32 (1952) the Commission, following earlier precedent, held that independent contractor subhaulers are prohibited by statute from operating without the type of permit or certificate required for the operations which they conduct, and that the type of permit or certificate depends upon the scope or nature of their operations. This holding was reaffirmed in a later investigation, 53 Cal PUC 366 (1954). Notwithstanding these decisions the staff has consistently maintained that radial and highway contract carriers may subhaul under such permits for highway common carriers, and the Commission in the intervening years has not attempted to require that carriers who subhaul for

highway common carriers hold certificates. Although the staff has taken a liberal attitude with respect to subhauling for highway common carriers, they have historically taken an opposite view with respect to specialized carrier operations.[6/] Until quite recently the staff maintained that no highway carrier could subhaul for a specialized carrier unless the subhauler itself held the specialized permit or certificate provided for under the Code to transport the specified commodities at issue. This position was informally enforced by the staff, and was never challenged by the industry nor reviewed by the Commission until the enactment of Senate Bill 860 (Chapter 840, Statutes 1977).

In spite of this rather haphazard regulatory history the practice of subhauling has flourished. In recent years the growth in revenue earned by subhaulers has consistently outpaced the growth in overall intrastate revenue. With this growth, the need to more clearly define the legal status and proper scope of the practice has increased.

In implementing SB 860 we took the opportunity to review our present regulation of subhauling in order to provide carriers affected by the legislation a better basis upon which to decide the manner in which to convert, or grandfather, their radial permits. We felt that carriers who engage in subhaul operations should be given some indication of the extent to which cross authority subhauling would be allowed after the implementation of SB 860. Following this review we issued Decision 89575 describing the manner in which SB 860 would be implemented, and granting preliminary approval to liberal cross authority subhauling for both most specialized carriers and for highway common carriers. We indicated our general policy that:

6/ The Public Utilities Code contains a variety of provisions governing specialized carrier operations including petroleum transportation, Sections 214 and 3518; Cement, Section 214.1 and 3519; Dump truck, Section 3520; Livestock, Section 3521; Agricultural, Section 3525; Household goods, Section 5109; and Heavy Specialized, Section 3523 - Added by SB 721 (Chapter 821 Statutes 1979).

1. Any carrier may subhaul for any carrier holding like authority. Highway common carriers may, for example, subhaul for other highway common carriers.

2. Contract carriers may subhaul for any other type of carrier except household goods carriers.

3. Any carrier may subhaul for an agricultural carrier, with the exception of logs by a seasonal agricultural carrier.

Decision No. 89575 was subsequently modified by Decision No. 89730 to defer final resolution of all cross subhauling issues to Case No. 10278.[7] It was our intent that Decisions Nos. 89575 and 89730 provide guidance only, pending resolution of cross subhauling issues in this phase of Case No. 10278. Further hearings were scheduled in this proceeding following the issuance of Decision No. 89730 in order that all parties would have ample opportunity to present evidence on the issues involved. A full record on the cross subhauling issue has been made and all interested parties have now had an opportunity to be heard.

The range of testimony covered the entire spectrum, from those who proposed that any carrier be allowed to subhaul for any other carrier, to those who opposed cross authority subhauling in any form.

The Commission staff supported unlimited cross subhauling. This they pointed out would allow the maximum amount of equipment to be shifted to meet seasonal peak demands for trucking equipment such as occurs in agricultural hauling. They also felt the antimonopolistic

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[7] Petitions for rehearing of Decision No. 89575 were denied. Six petitions for writ of review were filed with the Supreme Court of California. (SF Nos. 23970, 23972, 23973, 23974, and 23976), which were denied. Request for a stay of Decision No. 89575 was denied by Decision No. 89897 dated January 16, 1979, with respect to subhauling issues.

effect desirable. The protected position of specialized carriers which has resulted from the staff's prior requirement that each subhauler have the same type of specialized carrier operating authority as is required by law of carriers offering specialized services to the general public, would be substantially reduced.

The California Manufacturers Association, The Traffic Managers Conference of California, and The Canners League of California strongly support the cross subhauling proposals of the staff. These organizations testified that the staff proposal will result in lower carrier operating costs through greater utilization of equipment, and that more equipment will become available to meet peak seasonal demands.

Carriers split on the issue. Carriers that employ large numbers of pullers (subhaulers furnishing only a tractor), engaged primarily in the transportation of general freight in truckload quantities and in the dump truck field supported liberal cross subhauling. Considerable opposition however was voiced by dump truck subhaulers, and dump truck overlying carriers that employ full-unit subhaulers.

Dump truck subhaulers and dump truck overlying carriers that employ full-unit subhaulers alleged that there is sufficient dump truck equipment available from carriers who have specialized dump truck permits to meet existing demand. They admitted that there was a shortage of dump truck equipment in 1978, but responded that building and construction activities were slower in earlier years which resulted in a surplus of dump truck equipment in those years. They also alleged that special skills are required to operate dump truck equipment which are not generally possessed by all truckers and that this fact is reflected in Sections 3610 and 3615 of the Public Utilities Code.[8/] Evidence was presented by other dump truck overlying carriers to show that demand for dump truck service exceeds the supply, that statutory restrictions on the issuance of dump truck permits have effectively eliminated entry into the field and

8/ Section 3610 declares dump truck transportation services to be a "highly specialized type of truck transportation."

aggravated this supply problem, and that carriers who do not possess dump truck authority can perform satisfactory service as dump truck subhaulers.

AIOO and CDTOA contend that the language of Sections 3520, 3610 and 3611 prohibits cross subhauling in the dump truck industry. Section 3520 provides that all persons transporting materials for-hire in dump trucks are subject to the Act, including, they argue, subhaulers so engaged.9/

After consideration of the evidence and argument presented in this proceeding, we find it necessary to modify our preliminary findings and conclusions with respect to cross authority subhauling expressed in Decision 89575, supra.

The practice of subhauling has been recognized by the legislature. Subhauling is mentioned in Sections 1074, 3574 and 1064.1 of the Code. The legislature has not however addressed the question of cross authority subhauling. It is not specifically mentioned in any of the sections of the Code defining specialized carrier operations. AIOO and CDTOA have nevertheless cited the Dump Truck Carriers Act in support of their position against cross subhauling. We do not find their statutory interpretation persuasive.

Section 3520 of the Code defines dump truck carrier essentially as any person or corporation engaged in transportation for compensation of materials in dump trucks. Similar language is found in practically every code section which defines a carrier class. See for example Sections 213 (highway common carrier), 214 (petroleum irregular route carrier), 214.1 (cement carrier), 3518 (petroleum contract carrier), 3519 (cement contract carrier), 3521 (livestock carrier), 3525 (agricultural carrier) and 3523 (heavy specialized carrier). This language if applied literally would produce absurd results. We do not believe that the legislature intended to require

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9/ Section 3520 provides, "'Dump truck carrier' means any person or corporation engaged in the transportation for compensation over any public highway in this state of mining, building, paving and construction materials, except cement or liquids, in bulk in dump truck equipment." Section 3610 requires all dump truck carriers to obtain a permit authorizing such transportation.

employees of specialized carriers to each obtain individual licenses from the Commission. Employees are "engaged in transportation for compensation," but they are not in the business of transporting property for the public. They are employees, merely providing labor to their employers who generally are in such business. As a result of this fundamental distinction we have required authority of those who are in the business of providing transportation to the public, but have not required that independent authority also be held by each of their employees.

Subhaulers are in many respects similar to employees. They engage in transportation for compensation, but when subhauling are providing primarily labor and equipment for the overlying carrier who is offering the transportation service to the public. Subhaulers in most instances have no more significant a business relationship with the shipping public than do employees. In both instances the employer or overlying carrier contracts with the shipper, determines the shipping charges, assumes responsibility for the safe and timely delivery of the shipment, bills the shipper and settles any claims which may have arisen. In our opinion, although there are important distinctions between employers and subhaulers, there is no more legal justification for requiring subhaulers to independently possess the same class of operating authority as the overlying carrier with which he is engaged than to require such authority of employees. In our opinion the statutes were enacted for the purpose of regulating carriers offering service to the public, and can be so construed.

Neither do we find any practical justification for requiring specialized authority of subhaulers. Restricting subhauling in this manner would only increase costs to carriers and shippers, and impede the ability of the industry to meet peak seasonal demands for transportation service.

The related question of what authority, if any, is required to subhaul remains. No change in the present manner of issuing permits or other operative authority to carriers wishing to subhaul

is recommended by the transportation division of the staff. In general, other parties concur with the transportation division on this issue. The staff legal division advocates economic deregulation of subhaulers. Legal would require no operating authority of subhaulers. Fred H. Mackensen appearing in behalf of the Murchison group of 39 permit and certificated carriers suggested that a distinction be drawn between those subhaulers who perform services exclusively for a single prime carrier and those who serve more than one overlying carrier. The former he suggested should be treated as essentially similar to employees, and the latter should continue to be regulated.

In our opinion the Code requires at least some authority from the Commission to subhaul. Although the sections of the Code cited above do not appear to encompass subhauling, the generic definition of "highway carrier" contained in Section 3511 is worded differently, and does appear to encompass those engaged in the practice. Section 3511 provides:

> "'Highway carrier' means every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, engaged in transportation of property for compensation or hire as a business over any public highway in this state by means of a motor vehicle, except that 'highway carrier' does not include:
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> (a) Any farmer resident of this state who occasionally transports from the place of production to a warehouse, regular market, place of storage, or place of shipment the farm products of neighboring farmers in exchange for like services on for a cash consideration or farm products for compensation.
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> (b) Persons or corporations hauling their own property.
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> (c) Any farmer operating a motor vehicle used exclusively in the transportation of his livestock and agricultural commodities or in the transportation of supplies to his farm.

> (d) Any nonprofit agricultural cooperative association organized and acting within the scope of its powers under Chapter 1 (commencing with Section 54001) of Division 20 of the Agricultural Code to the extent only that it is engaged in transporting its own property of its members.
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> (e) Any person exclusively transporting United States mail pursuant to a contract with the United States government.
> (Emphasis added)

Subhaulers do engage in transportation "for-hire as a business." While they are similar in many respects to employees in the trucking industry, unlike employees, subhaulers are independent businessmen and women. They generally provide overlying carriers with little more than labor and equipment, but in contrast to employees, they are in business independently of the overlying carrier with which they engage. The very specific exclusions contained in paragraphs (a) through (d) of Section 3511 reinforce this interpretation. If the legislature intended to exclude subhaulers from the definition of highway carrier and from regulation, it is improbable that they would specifically exclude persons hauling their own property and farmers transporting supplies to their farms, and yet remain silent with respect to persons engaged in the business of providing transportation service indirectly to the general public through subhauling.

Since subhaulers are "highway carriers" within the meaning of Section 3511, they are subject to regulation under Division 2, Chapter 1 of the Public Utilities Code. Section 3541 of Division 2 provides that:

> "No highway carrier ... shall engage in the business of the transportation of property for compensation by motor vehicle over any public highway in this State, except in accordance with the provisions of this chapter ..."

Under Section 3543 highway carriers are prohibited from operating any vehicle unless there is displayed on the vehicle an identifying symbol showing the classification to which the carrier belongs. This clearly implies that highway carrier subhaulers must belong to some classification.

If no other permit is possessed, subhaulers must have a contract carrier permit. In Section 3517 "highway contract carrier" is defined by exclusion:

> "'Highway contract carrier' means every highway carrier other than (a) a highway common carrier, (b) a petroleum contract carrier, (c) a petroleum irregular route carrier, (d) a cement contract carrier, (e) a dump truck carrier, (f) a cement carrier, (g) a livestock carrier, or (h) an agricultural carrier."

Subhaulers who do not possess any of the other listed authorities, are therefore highway contract carriers. Section 3571 prohibits highway contract carriers from engaging in business without a permit from the Commission. Therefore, those subhaulers who do not possess any other authority from the Commission must obtain a highway contract carrier permit in order to operate in California.

In summary, no provision of the Public Utilities Code prohibits unlimited cross authority subhauling, nor do we find any practical justification for doing so. Unlimited cross authority subhauling can lower costs for carriers and shippers, and will better enable the industry to meet peak seasonal transportation demands. At least some authority from the Commission is however required to subhaul. Carriers not possessing any other operating authority from the Commission must obtain a highway contract carrier permit in order to subhaul. This decision supersedes Decisions 89575 and 89730. Appendix B attached hereto supersedes similar appendices which accompanied Decisions 89575 and 89730.

Carrier-Broker Operations

In Exhibit 29 the staff concluded that principal, or overlying carriers that employ subhaulers exclusively to perform their transportation service are highway carriers and are not motor transportation brokers regulated under Sections 4801-4880 of the Code[10/]. Unlike motor transportation brokers, they offer single party accountability to the shipper, covering solicitation, estimation, documentation, and billing. Such carriers, often referred to as carrier-brokers, often operate without the possession of any equipment. Other overlying carriers own trailers that are leased to "pullers", or subhaulers owning tractors. The staff stated that the increasing competition from carrier-brokers has affected the stability and well-being of the traditional carriers which own their equipment. This conclusion was based upon little more than the observation that carrier-brokers do not assume the "characteristic burdens of transportation" and are not subject to unionization or union labor costs. According to the staff, these characteristic burdens of transportation embrace principally the cost and obligation of maintaining equipment in good operating condition and the business risk associated with a large capital investment in tractors and rising variable costs such as fuel and repairs.

To remedy this perceived problem the staff recommends that:

(1) No highway carrier operating authority should be issued if the applicant does not intend to assume the above described characteristic burdens of transportation;

10/ Section 4803 provides:

"4803. 'Motor transportation broker' means any person who, acting either individually or as an officer, commission agent, or employee of a corporation, or as a member of a copartnership, or as a commission agent or employee of another person, sells or offers for sale, or negotiates for or holds himself out as one who sells, furnishes, or provides, transportation over the public highways of this State, when such transportation is furnished, or offered or proposed to be furnished, by a motor carrier."

(2) Applicants for operating authority who intend to conduct only subhaul operations should be required to possess, either through lease or purchase, at least one power unit capable of pulling the trailing equipment that will be used to transport the commodity;

(3) Applicants for operating authority who intend to transport property directly for shippers should be required to possess, either through lease or purchase, at least one full unit of equipment (truck, truck and pull trailer, tractor and semi-trailer, tractor and a set of doubles or any combination of power unit and trailing equipment) capable of transporting the commodities for which operating authority is sought.

This proposal was widely criticized on the grounds that it is both unworkable and impractical. Cross-examination of staff witnesses and direct testimony of interested parties revealed a number of infirmities.

For example, Jet Delivery, Inc., One-Two-Three Messenger Service, ABC Messenger Service, Inc., Rocket Messenger Service, Inc., and Red Arrow Bonded Messenger Corporation presented testimony in opposition to the staff proposal requiring that each permit holder own or lease one full unit of equipment. These carriers hold permits as radial highway common carriers. They have for many years offered expedited delivery of such items as business records, legal documents, medical specimens, film, printing materials, and drugs which require immediate pickup and delivery. Each carrier utilizes small vans and passenger cars which are leased from their owners who are employed by the permit carrier. The carriers own none of the motor equipment used in their operations, and hire no independent employee drivers. The equipment leases conform to Part III of G.O. 130. In the performance of their duties, the lessor-drivers are under complete

direction and control of the permit carrier.[11] The messenger services contend that the use of driver-lessor employees has been an essential element of their success, as such operations compete primarily with proprietary services. The use of driver-lessors allows these carriers to maintain rates at a low enough level to attract sufficient volumes of traffic to operate efficiently. If the messenger services are required to conduct operations with their own equipment, they assert that they would be unable to remain competitive with proprietary operations and, thus, would be forced out of business.

The staff policy witness also criticized the proposal. He testified that the proposal would have no practical impact on carrier-brokers since any single piece of equipment including a pickup truck would satisfy the proposed requirement, even though that equipment may not actually be practical for the service in which the carrier is engaged. In this manner the intent of the requirement could easily be circumvented.

The evidence clearly demonstrates the infirmities inherent in this proposal. It would have little impact on the activities of carrier-brokers because no restriction is placed on the number of subhaulers a broker can engage. Ownership of one piece of equipment would be rather meaningless where carrier-brokers engage 50 to 100 subhaulers, as do many of the respondents in this proceeding. The staff policy witness recognized the rather limited practical effect of this proposal and indicated that the staff would not object were we to reject this recommendation. Finding no productive purpose to be served by the proposal, it will be rejected.

11/ In ABC Messenger Service, Inc., et al. (1971) 71 CPUC 694 we found that a noncarrier who leases his personal vehicle to a highway carrier, and in turn is then paid by the carrier for a stated period of time to perform transportation service, is an employee of the carrier, and not a highway carrier. That proceeding is leading with respect to driver-lessor operation.

To accomplish essentially the same objective as the foregoing staff proposal (that is to restrict carrier-broker operations) Teamsters, Delta Lines, and Pacific Motor Trucking (PMT) proposed that each overlying carrier transport at least 80 percent of its total business with its own equipment.[12/] The proposal requires that an overlying carrier maintain records that show, either by number of loads, by tonnage hauled, or by revenue, the amount of traffic handled by subhaulers for a given period. Whenever a maximum of 20 percent of that total is exceeded, subhaulers could no longer be used. Several of the parties oppose this proposal, including CMA, CCA, and overlying carrier groups, on the basis that it would severely and unnecessarily limit the operations of many overlying carriers in the truckload field.

We agree with the parties who oppose this recommendation. This proposal has little merit. It would curb the activities of carrier-brokers at the expense of industry efficiency. The proposal would in all probability lower carrier load factors, increase the number of empty miles, waste fuel, unnecessarily increase carriers' investment in equipment, and impede the ability of carriers to respond to peak demand particularly the seasonal demands of agriculture. The enforcement problems and record keeping required would, in addition, place a burden on overlying carriers and on our staff which far outweighs any possible regulatory purpose.

The principal purpose underlying both of these proposals seems to be reduction or elimination of the business operations of carrier-brokers. No need to reduce or eliminate the operations of such carriers has been demonstrated on this record. The competition

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12/ That proposal is derived from the statistical data furnished by the staff which showed that, on an overall basis, 20 percent of the total reported motor carrier revenue for 1977 was earned by subhaulers.

between carriers offering service through owner-operator subhaul labor and more traditional carriers has not been shown to be unhealthy to the industry, or in any way detrimental to the public by the testimony presented herein. While there may be some doubt on legal and practical grounds whether the carrier-broker is actually a carrier, there is no doubt that in the present scheme of operation within the transportation industry the carrier-broker occupies a significant role, particularly in the dump truck field.

The absence of empirical justification for reducing or eliminating the carrier-broker has not been overcome by the staff's reliance upon "the characteristic burdens of transportation." In Application of Cara Transportation Co. Inc., Decision No. 89136 (1978), we recently discussed the closely related concept of "dedication" and its importance to common carrier certification. Inherent in the notion of public utility service is at least some minimal dedication of facilities to public service. This requires applicants for common carrier authority to undertake some direct obligation and accompanying business risk.

> "Applicant's proposed operation as a public utility common carrier would be conducted with none of its own equipment. We are aware that existing common carriers use subhaulers on occasion. However, when certificating a common carrier we must find that the applicant possesses the fitness to provide the proposed service, which means adequate capital, equipment, and resources to reasonably conduct the public service proposed. Here, applicant owns none of the equipment to be used. It does not propose to contract with subhaulers only for overflow, or to handle peak period traffic, or to accommodate shippers when its own equipment is nonoperational. As such, we conclude that applicant has not demonstrated that it, with its facilities, can reasonably provide the public service for which it seeks a public utility franchise."

The staff would in effect extend this concept of dedication beyond its legal bounds to all carriers. Absent the legal requirement discussed in Cara, we presently see no reason why the obligations and business risks cannot be shared with those providing the business enterprise with labor and equipment. The very nature of the business relationship between carrier-broker and subhauler depends upon a sharing of business risks and obligations, including those which the staff has termed the "characteristic burdens of transportation." The fact that many of these "burdens" are undertaken by independent businessmen and women with whom the shipping public has little direct contact does not negate or undermine the value to the public of the service performed by these individuals. California law and our regulation permit owner-operators to serve shippers directly without the intermediation of prime carriers, or carrier-brokers. Many, nevertheless, have chosen to operate cooperatively in this manner. Future proceedings may shed more light on these relationships and lead the Commission to a different result.

Division of Revenues Between Carriers

Al00 proposed in Case No. 5432, Petition 904 that the Commission establish divisions of revenue between prime carriers and subhaulers in connection with all transportation subject to minimum rate regulation. Such divisions of revenue are presently mandated by Minimum Rate Tariffs 7-A, 17-A, and 20 governing dump truck transportation, and by Minimum Rate Tariff 10 governing the transportation of cement. It was agreed at a prehearing conference in this proceeding that the Commission would address in this case the basic issue raised in Case 5432, Petition 904.

Al00's petition was opposed by the staff, CMA, CTA, CCA, Murchison group, Handler group, and individual carriers.

Al00 presented evidence in support of its proposal through its general manager and carrier members. In its brief, Al00 recommends that the division of revenue accruing under minimum rates be distributed

95 percent to the subhauler who has his own full unit of equipment and 5 percent to the prime carrier; or 85 percent to the subhauler who pulls the prime carrier's trailing equipment, and 15 percent to the prime carrier. The divisions of revenues to subhaulers advocated by Al00 are substantially in excess of the revenues now received by subhaulers testifying in support of the proposal. Those subhaulers testified that without the establishment of minimum revenues for their operations, their revenues are, and will continue to be, below that necessary to continue safe, efficient, and profitable operations.

The proposal was opposed by the staff, CMA, CTA, CCA, Murchison group, Handler group, and individual carriers.

The Commission staff indicated that there exists no need for the Commission to interfere with the current pricing mechanism between prime carriers and subhaulers and expressed the opinion that the free market should set the level of subhaul rates. The staff also noted that it would be extremely difficult to devise an equitable division of revenue formula that can be applied universally to all or specified classes of prime carriers. CMA generally agreed with the staff.

CTA pointed out the several years and the many difficult problems that preceded the establishment of the current provisions of MRTs 7-A, 17-A and 20 establishing divisions of revenue. CTA believes those provisions were relatively simple to devise, inasmuch as they apply to fungible commodities handled in bulk in single truckloads, and do not reflect the many other different circumstances encountered in operations under other tariffs. When those problems are taken under consideration, the development of appropriate divisions of revenues assertedly presents an insurmountable task to carriers and to the Commission.

Individual overlying carriers testified that they use subhaulers under a variety of conditions under which the division of revenues advocated by Al00 would be inappropriate. For example, several small shipments may be accumulated by the overlying carrier as a single truckload and transported by a subhauler to final destination; or a subhauler may transport such a load between the

terminals of an overlying carrier. No consideration is given in A100's proposal to the services performed by the overlying carrier for the pickup and consolidation of the shipments, nor for the distribution made by the overlying carrier. Difficulties also would be encountered when portions of a single shipment are handled in different units of equipment, such as split pickup or split delivery shipments.

The evidence offered in support of this proposal was unconvincing. The use of subhaulers in California intrastate trucking is widespread. Particularly in view of the amount of subhauling in the industry today, the evidence offered to show that the practice under present regulation is unsafe, inefficient, and unprofitable was rather unimpressive. No credible evidence was introduced to substantiate the claim that safety, efficiency, or profitability would be enhanced in any way by a Commission set division of revenue between prime carrier and subhauler. Evidence of any public benefit, or benefit to shippers was equally elusive.

Based on the record in this proceeding we find that: (1) the establishment of divisions of revenues are not required to protect the interests of carriers, shippers or receivers of goods; (2) it does not appear that Commission set divisions of revenue would serve any useful purpose; (3) in order to establish divisions of revenues between overlying and underlying carriers detailed comprehensive cost data would have to be developed; and (4) the Commission staff does not have the resources to adequately accumulate, compile, and present such comprehensive cost data. We will not mandate any additional divisions of revenue. Existing rules regarding divisions of revenue in MRTs 7-A, 10, 17-A and 20 are by stipulation beyond the scope of this discussion and will not be altered at this time. They will be subject to independent review in a future proceeding.

Petition 904 in Case No. 5432 and related petitions filed by Al00 will be denied by separate order.

Revision of GO 102

GO 102-F (GO 102) contains rules governing bonding requirements in connection with subhauling, or leasing of equipment from an employee. Our staff proposed that GO 102 be made more "understandable" and "enforceable" by the following amendments:

(1) Prime carriers should be required to make available to subhaulers a schedule of rates setting forth the compensation to be paid to them for services to be rendered by the subhaulers.

(2) Prime carriers should be required to furnish to subhaulers copies of the rated freight bills for shipments transported by subhaulers.

(3) Prime carriers should be required to maintain subhaul registers to permit the staff to readily ascertain the subhaulers engaged, the dates shipments were completed, the freight bill numbers, the amounts due subhaulers, and the date payments were tendered to subhaulers. As a concomitant to this recommendation, subhaulers should be required to promptly notify the Commission staff of nonpayments, and to promtly file claims against the prime carrier's subhaul bond.

(4) Prime carriers should be required to make payment to subhaulers within 10 days after completion of the shipment (versus the present requirement that payment be made on or before the twentieth day of the calendar month following completion of the shipment).

The staff recommended no change in the $10,000 subhaul bond required of prime carriers by GO 102, pursuant to Sections 1074 and 3575 of the Public Utilities Code. These sections of the code require the Commission to determine and set such a bond which shall not be less than $2,000. We will discuss each of the issues raised by the staff separately.

Schedule of Subhaul Rates

The specific staff proposals concerning the publication of subhaul rates by prime carriers are:

a. Before engaging a subhauler or a sub-subhauler, a prime carrier shall publish a schedule of rates setting forth the compensation to be paid to the authorized carrier for the subhaul services rendered. The amount to be paid may be expressed as a percentage of the gross revenue, a flat rate per loaded mile or any other method deemed appropriate by the prime carrier.

b. Reductions and increases in the schedule may be effected at the discretion of the prime carrier on not less than one day's notice to the public.

c. A copy of the schedule shall be maintained at each of the prime carrier's business offices and terminals and shall be open for public inspection. A copy of the schedule is not required to be filed with the Commission. The schedule shall be maintained for a period of not less than three years.

d. The provisions of subparagraphs a, b, and c herein will not apply when the prime carrier pays 95% or more of the freight charges it receives from the debtor to the subhauler.

e. A prime carrier shall not deduct any charges, including but not limited to (1) advances, (2) fuel, (3) trailer rental, (4) tire services, or (5) maintenance and repair services of the subhauler's equipment, from any settlements unless such charges are set forth in a schedule which shall be maintained at each of the prime carrier's business offices and terminals. Such schedule shall be open for public inspection and may be increased or decreased at the discretion of the prime carrier.

The purpose of these recommendations according to the staff is to provide subhaulers with advance knowledge of the amount they will be paid for their services. GO 102 now requires that subhaul agreements be reduced to writing within five days after commencement of any subhaul service. The staff believes that many subhaulers now accept shipments from prime carriers without reaching agreement or understanding with respect to the amount they will be paid or deductions to be made by prime carriers.

This sometimes makes it difficult for subhaulers to obtain adequate compensation and leads to disputes over compensation. It is the staff's view that subhaulers are entitled to know what they will be paid before they agree to a haul. The staff believes that a schedule of subhaul rates and a schedule of deductions would eliminate much of the misunderstanding that occurs between the prime carrier and the subhauler over compensation, especially where subhaulers are put on the job by the prime carrier's dispatchers. The staff would not require schedules of subhaul rates and deductions to be filed with the Commission, nor do they propose regulating the level of subhaul compensation.

Testimony in opposition to this proposal was offered by CTA, Murchison group, CMA, the Johnson group, Traffic Managers and individual carriers. These parties raised several criticisms. They argued that the schedule will not aid subhaulers nor serve as an effective enforcement tool since as proposed, the schedule would not be filed with the Commission and could be changed at will. Subhaulers who frequently reach agreement with overlying carriers by telephone, or at locations away from the prime carrier's office would not be benefitted in any way. The schedule could easily be misquoted, or changed following the conversation. Primarily because of these features, most of the parties to this proceeding felt that as many disputes could arise concerning the schedules as now arise in the absence of such schedules.

Prime carriers objected in addition to the multiplicity of rates and conditions which would have to be reduced to writing where regularly employed subhaulers are paid on a different basis than so-called trip subhaulers. Prime carriers also objected to the additional administrative burden which preparing and revising the schedules would entail.

General Order 102 presently requires that subhaul agreements be reduced to writing within five days after the commencement of any subhaul service. This allows more room for misunderstanding than we feel is desirable, and provides no effective means to resolve disputes which result. A schedule of rates filed with the Commission,

and subject to change only upon prior notice, would provide subhaulers with knowledge of the amount they will be paid in advance, and would aid in the resolution of any disputes concerning payment. It would in addition, provide subhaulers with useful information in negotiating future compensation. By requiring that the schedule be filed with the Commission and changed only after notice, the majority of the arguments raised in opposition to the staff recommendation could be overcome, but the flexibility inherent in present subhaul arrangements would be further reduced. Although we are not thoroughly satisfied with the staff's recommendation, we are in agreement with their objective and will adopt their proposal in modified form on an experimental basis as set forth below:

a. Within 120 days after the effective date of this order all highway carriers engaging independent contractor subhaulers for the transportation of any regulated commodity shall file with the Commission a schedule of rates setting forth the compensation to be paid for subhaul services.

b. The amount to be paid may be expressed as a percentage of the gross revenue, a flat rate per loaded mile or by any other method deemed appropriate by the prime carrier.

c. Schedule rates may be increased or decreased at the discretion of the prime carrier on not less than ~~ten~~ five days' notice to the public, and the Commission.

d. A copy of the schedule shall be maintained at each of the prime carrier's business offices and terminals and shall be open for public inspection during business hours.

e. No deductions may be made from any settlement, including but not limited to deductions for advances, fuel, trailer rentals, tire services, or maintenance and repair services, unless such deductions are set forth in the prime carrier's schedule of subhaul rates.

f. The provisions of paragraphs (a) through (d) do not apply when the prime carrier pays 95% or more of the freight charges it receives from the debtor to the subhauler. 13/

13/ Note well the reference is to 95% or more of the freight charges, not 95% of the minimum rate, thus some dump truck operations may be encompassed by this provision.

Within two years after the effective date of this decision the Commission staff shall submit a report to the Commission containing an evaluation of this experimental program and recommendations with respect to its modification, cancellation, or extension.

Payments to Subhaulers

Paragraph 4 of GO 102 now contains a brief provision requiring that payment be made to subhaulers or lessor-employees on or before the 20th day of the calendar month following the completion of the shipment or termination of lease. The Commission staff proposed extensive revisions to this provision of the general order intended to insure prompt payment to subhaulers and to aid the staff in enforcement of the general order. As amended the relevant portions of the general order would read:

Payments to Subhauler and Sub-subhauler:

a. The prime carrier shall pay to the subhauler, or sub-subhauler the charges specified in the agreement provided in Paragraph 6 hereof within ten days after the completion of the shipment, excluding Saturdays, Sundays and holidays, by the subhauler or sub-subhauler. The subhauler or sub-subhauler shall notify the Commission within five calendar days if payments are not received within the period provided therein.

b. Every prime carrier engaging subhaulers shall maintain a subhaul register in such manner and form as will plainly and readily show the following information:

1. Name and T-number of the subhauler.
2. Freight bill and the date.
3. Date shipment completed.
4. Gross due the subhauler, deductions therefrom, and net amount due the subhauler.
5. Date payment tendered to the subhauler.

c. At the time of the settlement the prime carrier shall furnish the subhauler with a copy of the rated freight bill. A prime carrier may take reasonable steps to delete confidential information from the freight bill furnished the subhauler, but may not delete the charges actually assessed or the information necessary to determine such charges.

Payments to Lessor-Employees of Equipment:

> The Lessee-employer shall pay to the lessor-employee of the equipment the charges specified and in the manner provided in the written agreement. In the event the lease is canceled the lessee-employer shall pay the charges on or before the 20th day of the calendar month following the termination of the lease.

The staff agreed after the presentation of evidence by other parties that the proposed 10-day period for payment of subhaulers should be extended to 15 days. The majority of the parties, including many overlying carriers, supported the staff proposal that payment be made within 15 days. We find that shortening the period for payment to 15 days is reasonable, particularly in view of escalating costs which subhaulers generally incur in advance of payment.

The principal purpose advanced for the proposed subhaul register is to aid the staff in the enforcement of G.O. 102. Much of the information to be included in the subhaul register is already maintained by the carrier but is scattered through various records and not available in a central location. We do not believe the requirement of setting forth the data recommended by staff in a single register or book of accounts will impose an undue burden on prime carriers. It will, however, enable both prime carriers and our staff to quickly locate valuable information concerning subhauling and will be of significant assistance in enforcement work, and in the development of statistical data and background information on subhauling.

The staff proposal that subhaulers be furnished with rated freight bills is similar to the provisions adopted by the ICC in Ex Parte No. MC-43 (Sub. No. 7) (1979) 131 MCC 137, governing lease and interchange of vehicles. This would provide subhaulers with a means to determine the reasonableness of the compensation they receive and would provide information useful in negotiating future compensation. The ICC rule requires that freight bills be furnished only when payment to subhaulers is based on a percentage of revenue. The staff's recommendation would apply to all subhaulers regardless of the manner

in which they are compensated. Many carriers participating in this proceeding are engaged in service subject to ICC jurisdiction and indicated no objection to a uniform ICC-PUC Rule. Several felt such a uniform rule would be highly desirable. Other carriers opposed this proposal on several grounds. Certain information on freight bills is alleged to be privileged and should not, it was argued, be disclosed by prime carriers. Opposition was also based on the fact that some loads transported by subhaulers consist of numerous small shipments which have been consolidated by the prime carrier. Subhaulers transporting such loads are rarely paid a percentage of the revenue. Furnishing rated freight bills for such loads carriers claimed would be useless to the subhauler and burdensome to the prime carrier.

Whether or not subhaulers are compensated on the basis of gross revenue received by the prime carrier, we are persuaded that providing a copy of the rated freight bill to the subhauler involved has merit. This will, we believe, reduce the number of disputes concerning compensation; and will provide such subhaulers with information useful in evaluating the reasonablensss of present compensation and in negotiating future compensation. Any privileged information may be detected as indicated in the staff's recommendation. To limit provision of a rated freight bill to those instances where payment to the subhauler is based on a percentage of the gross revenue may encourage prime carriers to find a different basis for payment to subhauler simply to avoid the requirement of transmitting a copy of the rated freight bill to the subhauler.

The record in this preceeding reflects at least one situation that should form a basis for exception to the rated freight bill requirement. There are instances in which, because of the nature of the transportation, the subhauler, pursuant to our rule, would be receiving multiple freight bills for one transportation movement on his part. The information received in such an instance would be of little value to him and would constitute an undue burden on the prime carrier. Therefore, subhaulers should be provided

with copies of all rated freight bills for shipments moved by the subhauler except where five or more separately rated shipments have been consolidated by the overlying carrier for transportation by the subhauler in a single movement.

Bonding Requirements

The Murchison group recommended that the bond be reduced or eliminated. They felt that the bond primarily benefits bonding companies who receive premiums far in excess of their exposure. There is no evidence they claim that any bonding company has ever paid a claim under the bonding requirement. By analogy they cited the fact that shippers are not required to file bonds and that bad-debt losses resulting from shippers who do not pay their bills far exceed any losses carriers may incur in subhauling for a prime carriers. Revocation or suspension of prime carrier authority for nonpayment Murchison argued would provide more insurance against nonpayment of subhaulers and would save carriers the expense of bond premiums. The Murchison group recognized however that a subhaul bond of at least $2,000 is required by statute.

After careful study the staff recommended no change in the subhaul bond. The staff study showed that when large numbers of subhaulers are engaged by a single prime carrier the present bond amount of $10,000 is wholly inadequate to secure payment to all subhaulers. If however the amount of the bond was raised sufficiently to ensure payment to all subhaulers, it would be nearly impossible for any prime carrier to qualify, and the employment opportunities for subhaulers would be nearly eliminated. The staff study also indicated that the bond has not been an effective means of ensuring prompt payment to subhaulers. When a claim is brought, bonding companies refer the claim back to the prime carrier involved for settlement. Because the bonding companies do not automatically pay filed claims, subhaulers are reluctant to file claims against the bond for fear of losing

employment. If claims are not eventually settled by the prime carrier, the bonding company either raises the bond premium or refuses to renew the bond. These potential sanctions may have some effect, although the effect is difficult to document.

Although the present subhaul bond requirement neither assures prompt payment, nor even eventual payment to subhaulers, the requirement is nevertheless useful in achieving these objectives. Bonding companies perform an independent investigation to determine the financial responsibility of prime carriers. This screening process does provide some insurance to subhaulers. In this manner the bond requirement provides a useful function.

The Murchison recommendation with respect to suspension or revocation for non payment, or even late payment, to subhaulers appears to be another sanction that may be effective in insuring prompt and accurate payment to the subhauler.

We believe suspension or revocation of the operating authority of prime carriers who do not make prompt and accurate payment to their subhaulers, would serve as a useful enforcement in appropriate cases. We hereby declare that such will be the Commission policy.

Rate Deviations Involving Use of Subhaulers

After explaining our present policies involving subhauling and deviated rates, as expressed in recent decisions and in Resolution No. TS-284 (Footnote 12), the staff recommended the following changes:

1) Applicants for deviated rate authority should not be allowed to use the cost of purchased transportation to substantiate their requests.

2) Having been justified in this manner, a deviated rate should not be conditioned to require that subhaulers be paid a given percentage of such rate.

3) Carriers should not be granted deviated rate authority unless they are already enjoying the traffic.

The basis for these recommendations was the staff's belief that permit carriers which seeks rate deviations should make a substantial commitment to dedicate their own or lease equipment to the proposed service.

The teamsters proposed that, any subhauler performing subhauling services under a deviation rate be paid wages equal to the sum of:

(1) The rate of wages plus fringe benefits prevailing in the subhauler's locality, as determined by the California Department of Industrial Relations according to California Labor Code Sections 1720 et seq., and

(2) a reasonable return rate for the use of any and all equipment supplied by the subhauler plus the actual operating costs incurred and paid for by the subhauler.

Recent decisions issued in related proceedings involving trucking reform suggest the need for additional price competition in California intrastate trucking (see Decisions 90354 and 90663). Changes adopted in those decisions will effectively liberalize the regulation of rates subject to the minimum rate tariffs governing general commodities, and tank truck transportation. Changes in our present deviation pratice are not justified on this record, but will be reviewed more extensively in further reregulation proceedings.

Findings of Fact

1. The legal status of cross authority subhauling has never been very clear. This problem has been aggravated by the lack of a consistent coordinated approach to the issue by the Commission and our staff over the years.

2. In spite of this regulatory history the practice of subhauling has flourished.

3. Commission reports, of which we take official notice, indicate that in recent years the growth in revenue earned by subhaulers has consistently outpaced the growth in overall intrastate revenue.

4. Subhaulers are in many respects similar to employees. They engage in transportation for compensation, but when subhauling, provide primarily labor and equipment for the overlying carrier who is offering transportation service to the public.

5. Subhaulers in most instances have no more significant a business relationship with the shipping public than do carrier employees.

6. Both carriers with employee labor and carriers who use subhaulers in most instances make the initial contact with the shipper, determine the shipping charges, assume responsibility for the safe and timely delivery of the shipment, bill the shipper, and settle any claim which may arise.

7. There is no practical justification for requiring subhaulers to independently possess the same class of operating authority as the overlying carrier with which he is engaged. Restricting subhauling in this manner would increase costs to carriers and shippers, and impede the ability of the trucking industry to respond to peak seasonal demands for transportation service.

8. Unlike employees, subhaulers do engage in transportation for hire as a business. Subhaulers are generally in the business of providing labor and motor carrier equipment.

9. Unlimited cross authority subhauling should be allowed, as indicated on Appendix B attached hereto.

10. Overlying carriers that employ subhaulers exclusively to perform their transportation service generally offer single party accountability to the shipper covering solicitation, estimation, documentation and billing.

11. The staff's recommendation that applicants for authority be required to possess at least one unit of equipment would have little impact upon carrier-brokers and would accomplish no constructive objective. This recommendation should be rejected.

12. The proposal of Teamsters, Delta Lines, and Pacific Motor Trucking that each carrier transport no more than 20 percent of its freight through the use of subhaulers would in all probability lower carrier load factors, increase the number of empty miles, waste fuel, unnecessarily increase carriers' investment in equipment, and impede the ability of carriers to respond to peak demand, particularly the seasonal demands of agricultural shippers. The enforcement problems and record keeping required would in addition place a burden on overlying carriers and on our staff which far outweighs any possible regulatory purpose. This proposal should be rejected.

13. No present need to reduce or eliminate the operations of carrier-brokers has been demonstrated on this record. The competition between carriers offering service through owner-operator subhaul labor and more traditional carriers has not been shown to be unhealthy to the industry, or in any way detrimental to the public.

14. We find no justification on this record for extending the concept of dedication beyond its legal limits. We find no justification on this record for preventing or inhibiting the ability of owner-operators to voluntarily conduct business through prime carriers, nor do we find any reason why the obligations and business risks of offering transportation service cannot be shared with those providing the business enterprise with labor and equipment.

15. There exists no need or justification for the Commission to interfere with the current pricing mechanism between prime carriers and subhaulers by the establishment of additional tariff rules mandating divisions of revenue.

16. Many subhaulers accept shipments from prime carriers without reaching full agreement or understanding with respect to the amount of compensation they will receive. This sometimes makes it difficult for subhaulers to obtain adequate compensation and leads to disputes over compensation.

17. General Order 102 allows more room for misunderstanding than we feel is desirable, and provides no effective means to resolve disputes which arise.

18. A schedule of rates filed with the Commission, and subject to change only upon prior notice, would provide subhaulers with knowledge of the amount they will be paid in advance, and would aid in the resolution of disputes concerning payment.

19. A schedule of rates to be paid subhaulers would also provide subhaulers with useful information in negotiating future compensation.

20. The staff's recommendation with respect to a schedule of subhaul rates should be adopted in modified form as set forth in the body of this opinion on an experimental basis.

21. Shortening the period for payment of subhaulers to 15 days is reasonable and desirable particularly in view of escalating costs which subhaulers generally incur in advance of payment.

22. Maintenance of a subhaul register as recommended by staff will provide useful information in a single document and will not unduly burden prime carriers.

23. Requiring prime carriers to provide the subhauler with a rated copy of the freight bill at the time of payment may reduce the number of disputes concerning compensation and will provide the subhauler with useful information in evaluating the reasonableness of present compensation and in negotiating future compensation.

24. Subhaulers need not be provided with rated freight bills for shipments moved by the subhauler when five or more shipments have been consolidated by the overlying carrier for transportation by the subhauler in a single movement. ✓

25. Although the present subhaul bond requirement neither assures prompt payment, nor even eventual payment to subhaulers, the requirement is nevertheless useful in achieving these objectives.

26. The evidence presented with respect to recommended changes in the subhaul bond is inconclusive. No change in the subhaul bond requirement should be made at this time.

27. The Commission will, in appropriate cases, suspend or revoke the operating authority of prime carriers for failure to make prompt and accurate payment to subhaulers.

28. Changes in our present deviation practice are not justified on this record, but will be reviewed more extensively in further reregulation proceedings.

29. General Order 102-G should provide, among other things, that a prime carrier shall not engage any unauthorized carrier as a subhauler or sub-subhauler.

30. General Order 102-G, attached hereto as Appendix C, should be adopted and General Order 102-F canceled, after appropriate notice to the Speaker of the Assembly and Chairman of the Senate Committee on Rules.

31. Case No. 5432, Petition 904, and related petitions filed by A100, should be denied by separate order.

Conclusions of Law

1. The Legislature has not specifically addressed the issue of cross authority subhauling.

2. There is no more legal justification for requiring subhaulers to independently possess the same class of operating authority as the overlying carrier with which he is engaged than to require such authority of employees.

3. Neither subhaulers nor employees are required to possess such authority.

4. The statutes governing and defining motor carrier classes were enacted for the purpose of regulating carriers offering service to the public and can be so construed.

5. Subhaulers are "highway carriers" within the meaning of Public Utilities Code, Section 3511.

6. Subhaulers are subject to regulation under Division 2, Chapter I, of the Public Utilities Code.

7. Subhaulers must display on their vehicle or vehicles an identifying symbol showing the classification to which they belong.

8. If no other permit is possessed, subhaulers must, under Sections 3515 and 3571, obtain a highway contract carrier permit in order to operate in California intrastate commerce.

9. Overlying carriers that employ subhaulers exclusively to perform their transportation service and offer single party accountability to the shipper are highway carriers and are not motor transportation brokers.

10. Inherent in the notion of public utility service is at least some minimal dedication of facilities to public service. The application of this legal concept is limited however to those business entities regulated as public utilities.

11. California law and/or regulation permit owner-operators to serve the shipping public directly without the intermediation of prime carriers or carrier-brokers.

THIRD INTERIM ORDER

IT IS ORDERED that:

1. Unlimited cross authority subhauling will be allowed as indicated on Appendix B attached hereto.

2. All carriers engaged in subhauling will be required to possess at least some operating authority from the Commission. Carriers not possessing any other class or type of authority must obtain a highway contract carrier permit in order to operate in California intrastate commerce.

3. The following experimental program requiring carrier filed schedules of subhaul rates is hereby adopted.

   a. Within 120 days after the effective date of this order all highway carriers engaging independent contractor subhaulers for the transportation of any regulated commodity, shall file with the Commission a schedule of rates setting forth the compensation to be paid for subhaul services.

b. The amount to be paid may be expressed as a percentage of the gross revenue, a flat rate per loaded mile, or by any other method deemed appropriate by the prime carrier.

c. Schedule rates may be increased or decreased at the discretion of the prime carrier on not less than ~~ten~~ 7 day's notice to the public, and the Commisison.

d. A copy of the schedule shall be maintained at each of the prime carrier's business offices and terminals and shall be open for public inspection during business hours.

e. No deductions may be made from any settlement, including but not limited to deductions for advances, fuel, trailer rentals, tire services, or maintenance and repair services, unless such deductions are set forth in the prime carrier's schedule of subhaul rates.

f. The provisions of paragraphs (a) through (d) do not apply when the prime carrier pays 95 percent or more of the freight charges it receives from the debtor to the subhauler.

4. Within two years after the effective date of this order the Commission staff shall submit a report to the Commission containing an evaluation of this experimental program and recommendations with respect to its modification, cancellation, or extension.

5. The Executive Director shall cause copies of proposed General Order 102-G attached hereto as Appendix C to be mailed to the Speaker of the Assembly and Chairman of the Senate Committee on Rules.

6. General Order 102-G attached hereto as Appendix C shall be reconsidered for formal adoption after appropriate notice has been given to the Speaker of the Assembly and Chairman of the Senate Committee on Rules.

7. The Executive Director shall cause a copy of General Order 102-G to be mailed to every highway carrier subject to the governing provisions contained therein after its formal adoption.

8. The Executive Director shall cause a copy of this order to be mailed to every highway carrier within sixty days of the effective date hereof.

9. Case No. 10278 shall remain open for consideration of the remaining topics set forth in the order instituting Case No. 10278 which have not been decided in this or prior decisions in this proceeding.

The effective date of this order is the date hereof.

Dated JAN 15 1980, at San Francisco, California.

President

Commissioners

APPENDIX A

LIST OF APPEARANCES

Respondents: Murchison & Davis, by Donald Murchison, Attorney at Law, and Fred H. Mackensen, for 39 carriers; D. J. McCracken, for R. B. Matheson Trucking, Inc.; Arvel G. Batchelor, for Allyn Transportation Company; Larry P. Boland, for Statewide Transport Service, Inc.; Donald Bunker, for Sierra Express; Frank P. Lucas, for Energy Carriers, Inc.; Herman H. Parsons and Joel Wallace, for Wallace Transport; Roger L. Ramsey, Attorney at Law, for Red Arrow Bonded Messenger Corporation; Howard C. Vose, for Bigge Drayage Company; Eldon M. Johnson, Attorney at Law, for Dreisbach Export Packing, Guthmiller Trucking, Inc., and Teresi Trucking, Inc.; Loughran & Hegarty, by Thomas M. Loughran, Attorney at Law, for DeAnza Delivery Systems, Inc., Jet Delivery, Inc., ABC Messenger Service, One-Two-Three Messenger Service, and Rocket Messenger Service; Lee Pfister, for Willig Freight Lines; James A. Nevil, for Nevil Storage Company; Ernest E. Gallego, Marvin S. Maltzman, Attorneys at Law, and Robert C. Johnson, for Bekins Moving and Storage Company; Henry Bartolo, for Jet Delivery, Inc.; Milton W. Flack, Attorney at Law, for MGM Transportation, Inc., Brothers Transportation Inc., Service Craft Corporation, Inc., W. W. Lynch, Inc., BBD Transportation, Burton Truck & Transfer Co., Cool Transportation, S & H Truck Lines, Simon Trucking, Inc., Trk Trans, Inc., Specialized Cartage, and Langdon Transportation; Andrew Skaff, Attorney at Law, and Thomas R. Dwyer, for Delta California Industries; Joseph MacDonald, Lowell Christie, and Wayne Varozza, for California Motor Express; J. McSweeney and A. D. Smith, for Delta Lines; Tony M. Rocha, Jr., Attorney at Law, for Tony M. Rocha, Jr. Trucking; Carlton D. Leonard, for Carl Leonard Trucking; Scott J. Wilcott, Attorney at Law, for Conrock Co.; Frank R. Golzen, Attorney at Law, for Universal Transport System, Inc., Anrak Corporation, Jim Rollert Trucking Company, and Bayview Trucking, Inc.; C. E. Goacher, for DiSalvo Trucking Co.; Armand Karp, for Rogers Motor Express; Philip N. Deckard, for Dedicated Transport, Inc.; John MacDonald Smith, Attorney at Law, for Pacific Motor Trucking Company; Hillel Sharlin, for ABC Messenger Service, Inc.; Lowell E. Hoskins, for 1-2-3 Messenger Service; Dennis G. Moran, for Moran Moving & Storage; Steven B. Thomas and Tony Heywood, for West Transportation, Inc.; Mrs. G. Mackson Hemphill, for Rapid Radial Transport, Inc.; Carr, Smulyan & Hartman, by George M. Carr, Attorney at Law, for Imperial Drayage Company, Inc.; Gilbert E. Somera, for J C Trucking; Mike R. Conrotto,

for Mike Conrotto Trucking; Harold F. Culy, for Bayview Trucking, Inc.; S. M. Haslett, III, for the Haslett Company; Frank Hayashida, for Basic Materials Transport; Frank Ogi, for Insured Transporters, Inc.; O. F. Marcantonio, for Guthmiller Trucking, Inc.; Sheldon, Mitchell & Associates, by Sheldon Mitchell, for George Selko dba Ge-Be Freight Lines; Richard Proctor, for Dick Proctor Motor Transportation; Bill Rackley, for Bill Rackley Trucking; Russell, Schureman, Fritze & Hancock, by R. Y. Schureman, Attorney at Law, for Allyn Transportation Company, Max Binswanger Trucking, Blake Delivery Service, Meier 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 Company, Victorville-Barstow Truck Line, and West Coast Warehouse Corporation; Dwight Willard, Attorney at Law, for The Osborne Group, Inc.; and Robert Plowman, Russell Opsahl, Tom Rutherford, Sr., Grover C. Spitznagel, Thomas R. Dwyer, Dennis G. Moran, L. Filipovich, and George Selko, for themselves.

Interested Parties: Graham & James, by J. S. Shafer, Jr., David J. Marchant, and Jerry J. Suich, Attorneys at Law, for California Carriers Association; Carl F. Grover, for U. S. Gypsum Co.; R. A. Dand, for Norris Industries; Asa Button, for Spreckels Sugar Division - Amstar Corporation; Calhoun E. Jacobson, for Traffic Managers Conference of California; Tuttle & Taylor, by Ronald C. Peterson, Attorney at Law, for Agricultural Council of California, Blue Anchor, Incorporated, DFA of California, Dairymen's Cooperative Creamery Association, Sunkist Growers, Inc., and Bud Antle, Inc.; Thomas J. Hale, for California Grape & Tree Fruit League; Gordon G. Gale, for The Clorox Company; Thomas J. Hays, for California Moving & Storage Association; J. Grant Vincent, for Southern California Rock Prod. Association; Kenneth P. Harrison, for Harrison-Nichols Company Ltd.; E. O. Blackman and James D. Martens, for California Dump Truck Owners Association; Charles Magav, Attorney at Law, for California Attorney General; Handler, Baker & Greene by Marvin Handler, Attorney at Law, for 38 carriers; William R. Haerle, Attorney at Law, and Ronald C. Broberg, for California Trucking Association; William D. Mayer, for Canners League of California; Paul S. Henson, for Associated General Contractors of California; Vaughan, Paul & Lyons, by John G. Lyons, Attorney at Law, for California Fertilizer Association; Silver, Rosen, Fischer & Stecher, by Michael J. Stecher, Attorney at Law, for Applegate Drayage Company, Blincoe Trucking Company,

Clark Trucking Service, Inc., Devine & Son Trucking Company, Frontier Transportation, Inc., and Shifflet Brothers, Inc.; Harry C. Phelan, Jr., for California Asphalt Pavement Association; Jess J. Butcher, for California Manufacturers Association; Ralph O. Hubbard and Allen R. Crown, Attorney at Law, for California Farm Bureau Federation; Lee Adler, for California Grain and Feed Association; Woody Graham, for Kaiser Sand & Gravel Company; William A. Watkins and Peter J. Coyle, for Bethlehem Steel Corporation; Don Reining, for Southern California Ready Mix Concrete Association; Ron Child, for Eight Ball Line Trucking; Cecil Dennis, for Brockway Glass Company; James R. Foote and David N. Nissenberg, Attorney at Law, for Associated Independent Owner-Operators, Inc.; Linda Spangler, for Spangler Trucking; Les August, for The Industrial Office; Captain John E. Law, for Department of California Highway Patrol; R. W. Endicott, for U.S.A., Inc.; Brundage, Davis, Frommer & Jessinger, by Roger A. Carnagey, Robert E. Jessinger, and Albert Brundage, Attorneys at Law, for California Teamsters Public Affairs Council and the Western Conference of Teamsters; Karl L. Mallard, for C and H Sugar Company; Frank Martinez, for Teamsters Local 287, Deregulation Committee; Tad Muraoka, for the IBM Corporation; M. J. Nicolaus, for Western Motor Tariff Bureau, Inc.; Daniel Quan, for Safeway Stores, Inc.; Marion I. Quesenbery, Attorney at Law, for the Western Growers Association; John T. Reed, for the Pacific Coast Tariff Bureau; Robert P. Schafer, for Duracell Products Company; Don B. Shields, for the Highway Carriers Association; Richard I. Siudzinski, for Kraft, Inc.; Joseph H. Alvarez, for the Department of General Services, State of California; Richard Austin, for Kaiser Cement & Gypsum Corporation; E. J. Bertana, for Lone Star Industries, Inc.; J. R. Cedarblade, for Aggregates and Concrete Association of Northern California, Inc.; Robert A. Kormel, for Pacific Gas and Electric Company; Donald W. Dowlearn for California Department of Transportation; and Frank Spellman, E. O. Blackman, Gene Carmody, Philip K. Davies, Helen Daley, James E. Dellamaggiore, Robert Turner, and R. H. Griffiths, for themselves.

Commission Staff: James J. Cherry, Attorney at Law, George Kataoka, and T. H. Peceimer.

APPENDIX B

AUTHORIZED SUBHAULING BETWEEN HIGHWAY CARRIERS

SUB-HAULER ↓ / PRIME CARRIER →	HIGHWAY COMMON	PETROLEUM IRREGULAR ROUTE	CONTRACT	CEMENT CONTRACT	AGRICULTURAL	SEASONAL AGRICULTURAL	LIVESTOCK	SEASONAL LIVESTOCK	DUMP TRUCK	PETROLEUM CONTRACT	HOUSEHOLD GOODS	CEMENT CARRIER	HEAVY SPECIALIZED
HIGHWAY COMMON	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
PETROLEUM IRREGULAR ROUTE	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
CONTRACT	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
CEMENT CONTRACT	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
AGRICULTURAL	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
SEASONAL AGRICULTURAL	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
LIVESTOCK	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
SEASONAL LIVESTOCK	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
DUMP TRUCK	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
PETROLEUM CONTRACT	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
HOUSEHOLD GOODS	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
CEMENT CARRIER	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
HEAVY SPECIALIZED	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES

GENERAL ORDER NO. 102-G

(Supersedes General Order No. 102-F)

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RULES TO GOVERN ENGAGEMENT OF AND PAYMENTS TO INDEPENDENT CONTRACTOR SUBHAULERS AND BONDING REQUIREMENTS ON SUBHAULING OR LEASING OF EQUIPMENT FROM LESSOR-EMPLOYEE

Adopted _____. Effective _____.

(Decision No. _____, Case No. 10278)

1. Carriers subject to order:

This General Order applies to all highway carriers as defined in Section 3511 of the Public Utilities Code, including a household goods carrier as defined in Section 5109 of said Code.

2. Definitions:

a. Authorized carrier means a highway carrier licensed by the Commission under the provisions of the Public Utilities Code. Unauthorized carrier means a highway carrier not licensed by the Commission.

b. Prime carrier (principal or overlying carrier) means an authorized carrier that contracts with a shipper to provide transportation service for the latter, but in turn, engages the services of another authorized carrier known as the independent contractor subhauler (subhauler or underlying carrier) to perform that service. The term prime carrier also includes any independent contractor subhauler who engages other authorized carriers to perform all or part of the services which such independent contractor subhauler has agreed to render for a prime carrier. Such an engaged authorized carrier is designated as a sub-subhauler and as to it, the original independent contractor subhauler is a prime carrier.

c. Independent contractor subhauler (subhauler or underlying carrier) means any authorized carrier who renders service for a prime carrier (principal or overlying carrier), for a specified recompense, for a specific result, under the control of the prime carrier as to the result of the work only and not as to the means by which such result is accomplished. This term includes sub-subhaulers in appropriate cases.

d. Lessor-Employee means an employee of a carrier subject to this order, which employee leases equipment to its employer.

e. Lease means a contract by which any person, who or which owns, controls or is entitled to the possession of any vehicle or vehicles of the types described in Section 3510 of the Public Utilities Code, called the lessor-employee, lets or hires (the same to its employer carrier), which is subject to the provisions of this general order, and called the lessee, for the purpose of having such vehicle or vehicles used in the for-hire transportation business of such lessee.

f. Completion of shipment by a subhauler or sub-subhauler means that the transportation agreed to be performed by such subhauler or sub-subhauler has been performed in full and evidenced by proof of delivery of such transportation to the prime carrier.

g. Termination of lease occurs when the period covered by the contract of lease has expired as evidenced by the terms thereof.

h. Claim means a demand by a subhauler or sub-subhauler for an amount due for the transportation of property, from the carrier for whom subhauling or sub-subhauling has been performed; or by a lessor-employee for an amount due as equipment rental from the carrier to whom such equipment has been leased.

i. Setoff means deductions that a carrier may make against the claim of the subhauler or sub-subhauler.

j. Settlement means payment from carrier to subhauler or sub-subhauler after setoff.

3. Engagement of an Unauthorized Carrier either as a Subhauler or Sub-subhauler by a Prime Carrier:

A prime carrier shall not engage any unauthorized carrier as a subhauler or sub-subhauler.

4. Agreement Between Parties:

a. Every agreement for subhauling, sub-subhauling or leasing of motor vehicles from a lessor-employee entered into by a carrier shall be reduced to writing and executed by the prime carrier or the lessee-carrier and presented to the subhauler, sub-subhauler or lessor-employee prior to, or within five days after, commencement of any subhaul service or such lease of equipment. Such writing shall also be signed by the subhauler, sub-subhauler or lessor-employee, shall contain all of the terms of such agreement and shall specify all charges payable thereunder for subhaul or lease of equipment, and shall include the name and address of the surety providing the bond required therein as well as the expiration date of such bond. The agreement for subhauling or sub-subhauling shall also contain the prime carrier's "T" file number assigned by the Commission and the subhauler's or sub-subhauler's "T" file number.

b. The amount to be paid by the prime carrier or lessee to the subhauler (sub-subhauler) or lessor shall be clearly stated on the agreement or lease and shall provide for all setoffs, if any, for such amounts as may be due from the underlying carrier to the overlying carrier, including but not limited to fuel, trailer rental, tire services, or repair services furnished by the prime carrier or lessee.

c. A copy of each agreement shall be retained and preserved by all parties thereto, subject to the Commission's inspection, for a period of not less than three years from the date of the termination of the agreement.

d. Every prime carrier engaging subhaulers shall maintain a separate subhaul register or single book of account in such manner and form as will plainly and readily show the following information:

1. Name and T-number of the subhauler.
2. Freight bill and the date.
3. Date shipment completed.
4. Gross due the subhauler, deductions therefrom, and net amount due the subhauler.
5. Date payment tendered to the subhauler.

5. Payments to Subhauler and Sub-subhauler:

a. The prime carrier shall pay to the subhauler, or sub-subhauler the charges specified in the agreement provided in Paragraph 4 hereof within 15 days after the completion of the shipment, excluding Saturdays, Sundays and holidays, by the subhauler or sub-subhauler.

b. Before or at the time of the settlement the prime carrier shall furnish the subhauler with a copy of the rated freight bill or freight bills, except in those instances in which five or more shipments have been consolidated by the prime carrier for transportation by the subhauler in a single movement. A prime carrier may take reasonable steps to delete confidential information from the freight bill furnished the subhauler, but may not delete the charges actually assessed or the information necessary to determine such charges.

6. Payments to Lessor-Employees of Equipment:

The lessee-employer shall pay to the lessor-employee of the equipment the charges specified and in the manner provided in the written agreement. In the event the lease is cancelled the lessee-employer shall pay the charges on or before the 20th day of the calendar month following the termination of the lease.

7. Bonding Requirements:

a. No carrier shall engage any subhauler, sub-subhauler or lease any equipment as a lessee from a lessor-employee unless and until it has on file with the Commission a good and sufficient bond in such form as the Commission may deem proper, in a sum of not less than $10,000, which bond shall secure the payment of claims of subhauler, sub-subhauler and lessor-employees of highway carriers in accordance with the terms of Paragraphs c, d, e and f hereof.

b. Each bond filed pursuant to the foregoing shall cover the full extent of the carrier's operations; that such bond may cover more than one operative authority held by the same carrier; that when a carrier with such a bond on file with the Commission obtains additional operative authority, said bond shall be revised or reissued to cover the additional operative authority; and that the name of the carrier's surety company in any bond filed pursuant hereto will be made public by the Commission upon reasonable request therefor.

c. The terms of the bond shall include: that any person or persons to whom an amount may be due and payable may file a claim therefor with the surety; that upon the filing of the claim, the surety shall notify the Commission and the carrier in writing of such filing; that such notification to the Commission shall be addressed to the Public Utilities Commission of the State of California at its office in San Francisco; that suit against the surety shall be commenced within one year after the filing of said claim; and that the surety waives any rights it may have under Section 2845 of the Civil Code of the State of California.

d. The bond required by paragraph (a) hereof shall be filed by the carrier as principal and by a qualified surety insurer, authorized to do business in the State of California, as surety, for the benefit of any person, firm, or corporation serving as a subhauler or sub-subhauler for or as a lessor-employee of equipment to, said carrier.

e. A subhauler, sub-subhauler or lessor-employee of equipment to whom an amount may be due, either as transportation charges for any shipments subhauled or as the rental of any equipment leased, and not paid within the time period provided in Sections 5 and 6 hereof, shall file a claim therefor with the surety and notify the Commission of such filing against the bond herein required. All such claims must be filed within 120 days after the date of completion of shipment or termination of lease or after the date on which any payment falls due under the terms of Sections 5 and 6 hereof.

f. The surety may cancel such bond by written notice to the Public Utilities Commission of the State of California at its office in San Francisco, such cancellation to become effective 30 days after receipt of said notice by the Commission.

8. In case of conflict between this general order and the provisions of a minimum rate tariff of this Commission, the minimum rate tariff shall apply.

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA

By JOSEPH E. BODOVITZ
Executive Director