

ORIGINAL

Decision No. 92632 JAN 21 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Case No. 10278
(Phase II - Topics 5 & 6)
(Order Granting Limited
Rehearing dated May 20, 1980)

(For appearances see Appendix A.)

OPINION ON REHEARING

In Decision No. 91247 issued January 15, 1980 in this proceeding, the Commission authorized unlimited cross-authority subhauling among highway carriers, required prime carriers to provide subhaulers with copies of rated freight bills covering shipments they transport, and established an experimental program of carrier-filed subhaul rates. Petitions for rehearing were filed by California Trucking Association (CTA), California Dump Truck Owners Association (CDTOA), California Carriers Association (CCA), Associated Independent Owner-Operators (AIOO), Bay Area Construction Truck Owners Coalition (BACTOC), and Highway Carriers Association (HCA).

Decision No. 91836 dated May 20, 1980 granted rehearing of Decision No. 91247 limited to the following issues:

1. Whether restrictions should be placed on dump truck subhauling by carriers who do not hold dump truck permits, and
2. Whether restrictions should be placed on subhauling by seasonal agricultural and seasonal livestock carriers.

In all other respects rehearing was denied.

Decision No. 91836 states that the Commission considered every allegation of the petition for rehearing and was of the opinion that no legal basis for rehearing had been stated. It states, however, that the decision to allow cross-authority subhauling in the dump truck field is very controversial and that subhauling is more prevalent in dump truck transportation than in any other segment of the industry, but historically has been limited to carriers holding dump truck permits. It further states that the petitions for rehearing filed with respect to this issue suggest that there may be compelling policy reasons for preserving some limitations on subhauling in this field which were not fully considered in the initial hearings in Case No. 10278.

Background

Decision No. 91247 adopted unlimited cross-subhauling for all classes of highway carriers. That decision contains a chart reproduced herein as Appendix B which shows the subhauling between highway carriers authorized therein. Reference to that chart shows that a highway carrier holding any type of permit or certificate may subhaul for any other class of highway carrier. In reaching its decision to permit unlimited cross-authority subhauling, the Commission made the following findings of fact and conclusions of law:

Findings of Fact (Decision No. 91247)

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, indicated 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, they 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.

Conclusions of Law (Decision No. 91247)

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.

In the reopened proceeding we will review these findings and conclusions in light of the evidence adduced in the initial phases of Case No. 10278 and in the reopened proceeding.

Limited Rehearing

The limited rehearing granted in Decision No. 91836 was held before Administrative Law Judge Mallory in San Francisco on August 11 through 14, 1980. Issue 1 (dump truck carriers) was submitted subject to the receipt of concurrent briefs on September 29, 1980. Issue 2 (seasonal agricultural carriers) was submitted on August 11, 1980.

Subhauling by Seasonal Agricultural Carriers

In 1977 the California Legislature (Senate Bill 860) created several new classes of highway carriers, including agricultural carrier, livestock carrier, seasonal agricultural carrier, and seasonal livestock carrier (Public Utilities Code, Article 3.5, Sections 3581 through 3586). Pertinent to this proceeding are Sections 3581, 3582, and 3584.2, which read as follows:

"3581. The transportation for compensation over any public highway in this state of ordinary livestock, or fresh fruits, nuts, vegetables,

logs and unprocessed agricultural commodities in any motor vehicle or combination of vehicles is declared to be a highly specialized type of truck transportation. This article is enacted for the limited purpose of providing necessary regulations for this specialized type of transportation only, and it is not to be construed for any purpose as a precedent for the extension of such regulations to any other type of transportation.

"3582. No livestock carrier or agricultural carrier shall engage in the business of transportation for compensation over any public highway in this state of livestock, or fresh fruits, nuts, vegetables, logs and unprocessed agricultural commodities in any motor vehicle or combination of vehicles unless there is in force a permit issued by the commission authorizing such operation."

* * *

"3584.2. The commission shall issue a permit as a seasonal agricultural carrier or a seasonal livestock carrier to any applicant for such seasonal authority. Such seasonal permit shall authorize only the transportation of unprocessed agricultural commodities, including livestock. Such seasonal permit shall not be issued for a period exceeding three calendar months and shall not be renewed more than twice in any calendar year."

Effective October 31, 1978, in Decision No. 89575, which implemented Senate Bill 860, the Commission established the following interim policy with respect to cross-authority subhauling:

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.

Subsequently, in Decision No. 91247, the Commission revised its policy on cross-authority subhauling. That policy, as more specifically set forth in Appendix B, placed no restrictions on cross-authority subhauling by seasonal agricultural carriers.

Exhibit 60 sets forth the analyses and recommendations of the Commission staff with respect to subhauling by seasonal agricultural and seasonal livestock carriers. As amended at the hearing, the staff proposal would revise the cross-subhauling grid set forth in Appendix B to indicate that (1) seasonal agricultural carriers are limited to subhauling for agricultural carriers, contract carriers, and highway common carriers in connection with the transportation of fresh fruits, nuts, vegetables, and unprocessed agricultural commodities, and (2) seasonal livestock carriers are limited to subhauling for livestock carriers, contract carriers, and highway common carriers in the transportation of livestock.

The Cannery League of California and CTA concurred in this staff recommendation. No opposition to the staff proposal was made at the hearing.

The staff witness explained the basis for his proposal as follows: The statutes referred to above provide the commodities which may be transported by each class of carrier. Seasonal agricultural carriers may transport all the commodities authorized to be transported by agricultural carriers, except logs. According to the witness, the movement of logs is a highly specialized form of transportation utilizing specially designed logging trucks and dollies. The dollies are equipped with bunks and the dollies may be extended to accommodate long logs. The logs are primarily hauled from landings in the woods to mills. Occasional movements are made from storage areas (log decks). In recent years, logs

are moving to water ports for export. Logs are periodically transported from origins in California to points in southern Oregon. Hauling logs is unique in many ways, i.e., specialized equipment is utilized, log hauling is seasonal in nature, there are no back hauls, and many movements are on private property. Logging activities are concentrated in the northern and eastern mountainous areas of the State. Operations are seldom conducted during the winter months.

Under the 1977 Code revisions, only agricultural carriers and authorized highway common carriers may haul logs as prime carriers. In order to obtain an agricultural carrier or highway common carrier certificate, an applicant must meet the statutory residency test. No such residency test is required for a seasonal carrier. According to the witness, the residency requirement was initially established in 1967 through legislation sponsored by northern California logger groups in order to prevent out-of-state log truckers from freely acquiring California permits to the detriment of log truckers within this State. The out-of-state log truckers seek work in California during the time when logging activities are at their low point, thus causing local truckers to lose work.

The staff believes that the Legislature excluded logs from the commodities that may be transported by seasonal agricultural carriers because seasonal carriers are not required to meet residency requirements for the issuance of other classes of permits. The staff also believes that the Legislature placed no residency requirement on the issuance of seasonal permits in order that there be the largest possible pool of trucks available to haul unprocessed agricultural products during the peak harvest

season and to permit the expedited movement of livestock from grazing areas to feed lots, and from feed lots to slaughter houses.

The staff concluded that in order to reflect the intent of the Legislature, seasonal carriers should not be authorized to conduct operations as subhaulers which could not be conducted as prime carriers. Therefore, it recommended that restrictions on subhaul operations of seasonal carriers be adopted as described above.

The Cannery League of California supported the proposal as it places no restrictions on the availability of trucking equipment needed to move unprocessed fruits, vegetables, and other agricultural products during the peak harvesting season.

CTA concurs in the staff recommendations for the reasons expressed by the staff witnesses.

The staff proposals concerning seasonal carriers are reasonable and should be adopted. Appendix B to Decision No. 91247 will be amended as shown in Appendix C to this order to reflect the changes adopted herein.

Unlimited Cross-Subhauling
In the Dump Truck Field

CDTOA, AIOO, BACTOC, and CTA opposed unlimited cross-subhauling in the dump truck field. CDTOA proposes a limited form of cross-subhauling. CTA, AIOO, and BACTOC ask that only dump truck carriers be allowed to subhaul for other dump truck carriers. CCA supports unlimited cross-subhauling and asks that it be continued. Minority Trucking-Transportation Development Corporation-West (MTTDC-West), a nonprofit organization assisting minority truckers, believes that unlimited cross-subhauling is a means of easing entry for minority dump truckers. The Commission staff took no position on this issue.

CDTOA represents both overlying and underlying carriers in the dump truck field. Its membership is composed largely of underlying carriers. AIOO and BACTOC primarily represent dump truck subhaulers. CCA's membership consists entirely of dump truck overlying carriers. CTA's membership covers the broad spectrum of highway carriers operating in California. Few of its members engage in dump truck transportation as their principal business.

CDTOA

CDTOA presented evidence through five witnesses. Four carriers engaged in operations in different areas of the State opposed unlimited cross-subhauling in the dump truck field. The associate manager of CDTOA testified as to the position of that association and as to his experience as a dump truck carrier.

The testimony of these witnesses shows the following: The prosperity of the dump truck industry is directly related to the rise and fall in construction. Construction is a cyclical industry. Peaks and valleys are frequent. For example, in the low period in 1973-74, about 25 to 30 of the dump truck carriers in Sonoma County went out of business. On the other hand, during the recent peak period in 1979, there were insufficient carriers available. Due to the economic slowdown in the spring of 1980, construction activity in California was at a low point at the time of hearing. Carriers experienced a sharp decline in the amount of their dump truck business. The witnesses attribute that decline in part to the economic recession and reduction in construction activity and, in part, to the entry of contract and agricultural carriers into the dump truck field under cross-subhauling regulations adopted in Decision No. 91247.

There has been an increase in the number of trailer units acquired by large overlying carriers. Such overlying carriers use tractor-only subhaulers (pullers) to pull their trailer equipment. Overlying carriers tend to go out of the dump truck field to find pullers, hiring those with contract carrier or agricultural carrier permits. As it is the practice of overlying carriers to use their own trailer equipment with pullers before full-unit subhaulers are employed, it is the full-unit subhaulers ("the backbone of the industry") which bear the brunt of the Commission's policy to allow unlimited cross-subhauling in the dump truck field.

CDTOA's position in this proceeding, as set forth in the testimony of associate manager, is that there is no basis whatsoever for permanently increasing the supply of carriers in the industry on a wholesale basis. On the other hand, CDTOA supports a program of issuing new dump truck carrier permits as a long-run need for more trucks is shown to exist in a particular geographical area, and it also supports limited cross-authority subhauling to better serve the shippers during construction boom periods, including periods of seasonal demand when a shortage of trucks develops. Limited cross-authority subhauling refers to a system whereby other carriers could come into the industry on a seasonal or other "as needed" basis to fulfill legitimate needs for more trucks but would not be a permanent force in the industry to compete with the existing carriers throughout the ups and downs of the business and seasonal cycles. CDTOA believes that utilizing the device of unlimited cross-authority subhauling to solve whatever problem there may be in fulfilling peak demands for trucks is "like using a sledgehammer to kill a fly."

CDTOA in its brief states that the evidence elicited at the rehearing established the following facts:

1. Unlike most other segments of California transportation where large fleet owners predominate, the backbone of the dump truck industry has been the full-unit owner-operator;
2. Whereas only 8 percent of California transportation outside the dump truck industry is performed by subhaulers, 75-80 percent of dump truck transportation is performed by subhaulers;
3. The dump truck industry enjoys the protection not only of minimum rate tariffs but also of division of revenue rules, thus enhancing its attractiveness to prospective entrants;
4. The dump truck industry is both highly seasonal and cyclical in nature, a fact highlighted by the last several years in which the boom period of the late 1970's has been replaced by the severe recession of 1980;
5. Because of the highly seasonal and cyclical nature of the industry, the full-unit owner-operator of dump truck equipment needs the protection afforded by limiting entry into the industry in order to ensure that sufficient work is available during the down periods to permit him to maintain the payments on his expensive equipment;
6. The practice and understanding in the dump truck industry and among the Commission staff has been that a dump truck permit is required in order to act as a subhauler in that industry;
7. Cross-authority subhauling in the dump truck industry has already had the following effects:

- a. The large overlying carriers have substantially increased the number of trailers that they own;
- b. The dump truck industry has been inundated by nondump truck carriers, half of whom have recently obtained highway contract carrier or other authority from the Commission for the purpose of entering the dump truck industry as cross-authority subhaulers;
- c. There has been a substantial decrease in the amount of work available to full-unit owner-operators since January 1, 1980 resulting in many of them being out of work while cross-authority subhaulers are still on the job as pullers; and
- d. There has been an increase in the amount of subhauling in the dump truck industry.

From the foregoing facts CDTOA argued that:

1. Cross-authority subhauling will destroy the structure of the dump truck industry as it presently exists.
2. The structure of the dump truck industry which will result from cross-authority subhauling will be unfair to shippers and to all dump truck carriers except the large overlying carriers with substantial amounts of trailing equipment.
3. The arguments advanced in favor of unlimited cross-authority subhauling by the large overlying carriers, represented in this proceeding by CCA, are disingenuous.
4. The argument advanced in favor of unlimited cross-authority subhauling by MTTDC-West lacks any evidentiary foundation.

5. Permitted dump truck carriers are not benefited in any substantial manner by being authorized to cross-subhaul in other segments of California transportation.
6. The solution to the problem of excess cyclical and seasonal demand for dump truck equipment by shippers is the issuance of temporary dump truck permits, not wholesale, unlimited cross-authority subhauling.

AIOO and BACTOC

Testimony on behalf of AIOO and BACTOC was presented by three witnesses. The contention of these witnesses is that since unlimited cross-subhauling has been authorized, brokers (i.e., overlying carriers) have acquired additional trailer units and have hired contract carriers to pull such units. According to BACTOC, the use of pullers by overlying carriers in the San Francisco Bay Area has been prevalent for some time. The combination of the recent reduction in construction activity and use of pullers has reduced revenues of full-unit operators by about 25 percent. When more trailer equipment is acquired by overlying carriers, the order in which subhaulers are dispatched changes. For example, a full-unit operator testified his "spot" dropped from 5th and 6th on the dispatch list to 11th and 12th because pullers were given preferential placement by the broker owning the trailers.

The position of AIOO was expressed in the testimony of its business manager. According to that witness, since unlimited cross-subhauling was authorized, full-unit owner operators have found that it is more difficult to obtain work. Many have been forced out of the dump truck industry and are now engaged in general freight or agricultural trucking. The witness estimated that cross-subhauling has added about 250 owner-operators who are pulling broker-owned trailing equipment and who are dispatched ahead of full-unit

owner-operators. In addition, the general slowdown of construction trucking has meant less work for all types of carriers. The witness estimated a 20 percent reduction in construction activity between the first six months of 1979 and a comparable period in 1980.

AI00's business manager believes that the ownership and maintenance costs of trailing equipment are approximately 12 to 15 percent of gross revenues. The applicable minimum rate tariffs permit overlying carriers to deduct 20 percent of the minimum rate from subhaulers' revenues for use for the overlying carriers' trailing equipment. The witness testified that the overstated allowance for trailer rental in the minimum rates encourages brokers to acquire trailer equipment and to use pullers.

In its brief, AI00 urged that the evidence shows that:

1. In periods of economic decline, the permitted carrier is unable to find enough work in the dump truck industry to maintain his business in a viable fashion.
2. Brokers have taken advantage of unlimited cross-authority subhauling by expanding the capacity of their trailing fleets in order to engage cross-authority subhaulers to pull this new equipment. Brokers thereby profit by the increased rentals. The continuation of this trend will spell disaster to the full-unit owner-operator.
3. Witnesses favoring unlimited cross-authority subhauling presented no evidence justifying a continuation of the practice in the face of the problems it has created.
4. Unlimited cross-authority subhauling has adversely affected the dump truck industry and particularly the full-unit owner-operator who holds a dump truck permit.

AI00 and BACTOC suggest that the Commission take the following steps to alleviate the problems created by unlimited cross-authority subhauling in the dump truck industry:

1. Put an immediate freeze on unlimited cross-authority subhauling;
2. Issue dump truck permits to all cross-subhaulers who have earned more than 50 percent of their revenue in the past six months working in the dump truck industry; and
3. Limit entry into the dump truck industry in the future to carriers satisfying the requirements of the Dump Truck Carriers Act and only after the applicant has made a strong showing of need and necessity for his services.

CTA

CTA presented evidence designed to show that it is the statutory intent that subhaulers have the same type of operating authority as the overlying carrier for which the subhauler performs service; therefore, cross-subhauling should not be authorized.

MTTDC-West

The director of MTTDC-West testified that the purpose of that organization is to act as a spokesman for minority truckers and to offer assistance to minority persons in gaining entry into the trucking business. The director supports unlimited cross-authority subhauling, as it is his belief that it reduces barriers to minority entry into the trucking field. The witness urged the reduction in other barriers that prevent entry by minorities or persons who have limited financial resources. The witness also urged affirmative action programs by large overlying carriers which would assist minority subhaulers to gain employment in the dump truck industry.

CCA

Ten witnesses testified for CCA, including seven overlying carrier members of the association, a rock producer, and two contractors.

The evidence adduced by these witnesses was directed to need for subhaulers during peak period of construction activity to provide sufficient dump truck equipment to meet shipper requirements.

The policy witness for CCA, Mr. Shafer of Trucking by J. S. Shafer, summarized the testimony of other witnesses for CCA and stated the position of that association. Shafer stated that CCA is strongly in favor of cross-subhauling. CCA was one of the first organizations to urge that cross-subhauling be permitted in the dump truck industry. CCA requested this Commission to expand the limited cross-subhauling authorized by Decision No. 89575 dated October 31, 1978 to unlimited cross-subhauling, which was eventually authorized by Decision No. 91247 dated January 15, 1980.

Shafer testified that shippers and contractors complain to overlying carriers about the lack of available dump truck equipment and have urged CCA members to reduce equipment shortages. Shippers and contractors enthusiastically support cross-authority subhauling as it provides needed equipment units. The chief reason that prime carriers have trailing equipment is to assure that they are able to meet the demands of the shipping public. If the prime carrier could rely exclusively upon full-unit operators to meet all of the equipment demands, there would be no need at all to own trailing equipment. However, most prime carriers have found that in times of heavy demand it is essential to have control over the trailing equipment in order to assure that the shippers' or contractors' demands can be met. Overlying carriers invested in additional trailing equipment toward the end of 1979. If an adequate supply of full-unit operators had been available, such investments would not have been made.

CCA supports unlimited cross-subhauling because its members believe that under the present statute governing entry into the dump truck field, the most appropriate way for the dump truck industry to meet the fluctuating demand for equipment is for overlying carriers to engage, as subhaulers, other carriers who hold authority from this Commission, but not necessarily dump truck carrier authority. The demand for equipment in the construction industry fluctuates with the economy and with the season of the year. CCA members believe that with unlimited cross-subhauling, prime carriers have the ability to meet a demand for additional equipment on very short notice.

Shafer testified that unlimited cross-subhauling has not caused dump truck carriers to lose jobs. He believes that the predominant reason for carriers not working today is the severe slowdown in the construction industry. CCA expects construction activity to increase substantially in the near future.

CCA does not recommend elimination of cross-subhauling when demand for equipment is waning; it is CCA's position that cycles of construction activity are not predictable and definable in such a way as to allow for the regulatory process to permit cross-subhauling under a given set of economic circumstances and not permit it in a different economic climate.

The witness also believes it is unreasonable to prevent the engagement of cross-authority subhaulers or to require termination of such subhaulers when work is slow, as the subhaulers have investments in dump truck equipment, and such terminations would not be based on subhaulers' ability to perform.

In its brief, CCA asserts that the reopened proceeding developed the following facts:

1. There was an unacceptable undersupply of dump truck equipment in 1978 and 1979 which resulted from a combination of the restricted issuance of dump truck carrier permits mandated by the provisions of the Dump Truck Carriers Act and the dramatic growth in construction demand.
2. Activity in the construction sector, and the consequent demand for dump truck equipment, is cyclical and seasonal.
3. The recent recession has caused a severe decrease in the demand for dump truck equipment. It has affected all segments of the industry.
4. Overlying carriers expanded their trailer fleets in the late 1970's in order to serve the needs of their shippers during periods of equipment shortage. Most of this expansion took place prior to the implementation of cross-subhauling in the dump truck field.
5. The findings of the trailer rental investigation conducted by the staff in 1972 do not consider the substantially higher costs incurred by overlying carriers in their trailer rental operations, and any claims of unreasonableness are inappropriate.
6. Imposing restrictions on cross-subhauling in the dump truck field would impede the ability of dump truck carriers to satisfy the needs of the shipping public.
7. CDTOA and AIOO have failed to demonstrate any material harm to full-unit owner-operators resulting from cross-authority subhauling.
8. Considering the number of carriers that enter the dump truck field as subhaulers, through the existing transfer procedure (§ 3614 of the Public Utilities Code), the estimated influx of some 400 carriers as cross-subhaulers into the field is not unreasonable.

9. Overlying carriers utilize their regular full-unit owner-operators before using equipment owned or engaged by other overlying carriers. To the extent that overlying carriers use each other's equipment, this is not necessarily detrimental to the full-unit owner-operator.

From the above, CCA asks the Commission to reach the following conclusions:

1. The primary responsibility of this Commission is to regulate the relationship between for-hire carriers and shippers and ensure a viable transportation system for the shipping public.
2. A legal justification exists for the authorization of cross-authority subhauling in the dump truck field as determined in Decision No. 91247. ✓
3. Guidelines for the proper conduct of cross-authority subhaulers were set forth in Decision No. 91247.
4. Cross-authority subhauling has provided a mechanism for the influx of supplemental equipment into the dump truck field without any devastating impact upon existing dump truck carriers.
5. Petitioners have failed to set forth facts leading to the conclusion that compelling policy reasons justify imposing a restriction on cross-authority subhauling in the dump truck field.

Discussion

The limited rehearing granted by Decision No. 91836 was conducted for the purpose of determining whether there are compelling policy reasons for establishing some limitations on subhauling in the dump truck field.

The basic facts concerning the structure of the dump truck industry, the cyclical nature of the construction industry, and the entry of significant numbers of cross-authority subhaulers into the dump truck field are not in dispute.

The parties to the initial phase of this proceeding contended that subhauling for dump truck carriers and other specialized carriers should be performed only by carriers holding the type of permit required by statute to be held by the overlying carrier. This contention was disposed of by Findings of Fact 4 through 9 of Decision No. 91247 (supra).

The policy questions presented in the reopened proceedings are whether, from a regulatory standpoint, it is preferable to restrict entry of nondump subhaulers as a means of protecting existing dump truck subhaulers from additional competition, or whether freedom of entry by nondump subhaulers should be continued in order to provide a sufficiently large pool of equipment to meet peak demand in periods of high employment.

AIOO, which primarily represents owner-operator subhaulers, prefers strict entry requirements. CDTOA, which primarily represents the same type of carriers as AIOO, asks that a lid be placed on entry only during the times when relatively little dump truck work is available. CCA, which exclusively represents overlying carriers, desires continuation of unlimited cross-authority subhauling.

The Commission must choose between competing contentions of similar merit. In reaching our conclusion, we considered what we believe are the needs of all those involved, including the public as a whole and shippers and receivers of property, as well as the subhaulers and overlying carriers. In our reregulation orders, we have endeavored to foster a sound transportation system and reasonable transportation rates. It is our view that competition produces both such objectives. Ease of entry fosters a competitive environment.^{1/} In short, it is our view that as few restrictions

^{1/} It may be noted that many of the full-unit owner-operators that testified in this phase of the proceeding began operations as pullers and acquired trailers after securing a foothold in the trucking business.

as possible should be placed on entry in order that carriers may operate in a fully competitive environment.

AIOO and CDTQA assert that the level of trailer rental charges provided under the minimum rates encourages large overlying carriers to acquire additional trailers and to hire more pullers to the detriment of full-unit subhaulers. The other side of this coin is that maximum trailer rental charges were established because the same organizations asserted that prior to the establishment of trailer rental charges, large overlying carriers were charging substantially greater trailer rentals than now provided under the minimum rates and had increased their trailer fleets to take advantage of such high rentals to the detriment of pullers. Having cured the pullers' problems of inadequate revenues, we are now called upon to curb entry of additional pullers in order to protect full-unit operators from incursion by pullers.

Pullers and full-unit subhaulers in the dump truck field have the protection of minimum rates. It is our view that some of the risks of operation should be borne by subhaulers (pullers or full-unit operators) if they desire to continue operations as independent businessmen. The competition engendered through unlimited cross-subhauling is consistent with the policies adopted in reregulation orders dealing with other types of motor carrier operations.

We cannot emphasize too strongly the difficulty we have encountered in reaching our decision to continue to permit unlimited cross-subhauling in the dump truck industry. We are very sensitive to the claims of such parties as AIOO, CDTOA and BACTOC that the full-unit operator is the "backbone of the industry." We are as concerned as these parties are to preserve the future viability of the independent full-unit operator and the small overlying carrier. We recognize the possibility that competitive forces may, in the absence of economic recovery, force such carriers to cease operations, resulting in fewer, but larger overlying carriers. Such a concentration among brokers in the dump truck industry ultimately would not benefit either shippers, the public generally, or the competitive ideal.

In the final analysis in a case such as this, where the competing theoretical considerations seem at first glance to be equally strong, the outcome must turn on the evidence adduced at the hearings. We have bent over backwards to give CDTOA, AIOO and BACTOC every opportunity to present clear and convincing evidence demonstrating the impact of unlimited cross-subhauling. Yet these parties have not identified a single carrier who has been forced out of the dump truck business solely or even primarily because of cross-subhauling. These parties differed on the number of new entrants into the business. CDTOA estimated that over 650 new carriers were competing for the scarce amount of business, but AIOO estimated only 250 new entrants. In either case, viewed against the total number of haulers in the industry, the number cannot be judged a flood of new entrants. No credible evidence was presented to substantiate the argument that cross-subhauling has been the sole or even the primary reason for overlying carriers increasing their trailer fleets. Virtually all of the witnesses testifying against cross-subhauling admitted that they hoped to see a return

to profitability and higher work levels for full-unit operators once the recession eased and the construction industry regained vitality. These witnesses were unable to demonstrate that the recession was not the chief cause of excess capacity in the dump truck industry at present. These witnesses were also unable to demonstrate that greater concentration had resulted or would be likely to result from our decision to permit cross-subhauling.

Our decision, however, is not written in stone. If in the future such parties as CDTOA, AICO and BACTOC can demonstrate through substantial statistical data that cross-authority subhauling is driving unreasonable numbers of full-unit operators or small overlying carriers out of business, or that increased concentration of the industry is having an unreasonable impact on rates and service, we will not hesitate to reconsider our decision. We stress, however, that a far more persuasive evidentiary showing must be made than has heretofore been presented to us.

For the reasons expressed above, we conclude, as a matter of policy, to continue unlimited cross-authority subhauling in the dump truck field.

Findings of Fact

A. Subhauling by Seasonal Agricultural Carriers and Seasonal Livestock Carriers

1. Seasonal agricultural carriers are authorized to transport all commodities authorized to be transported by agricultural carriers, except logs.

2. Seasonal livestock carriers are authorized to transport the same commodities as livestock carriers.

3. Only agricultural carriers and highway common carriers may haul logs as prime carriers.

4. In order to be issued an agricultural carrier or a livestock carrier permit, an applicant must meet a residency test.

5. No residency test is required for a seasonal agricultural carrier or seasonal livestock carrier.

6. The residency requirement was initially established in 1967 to prevent out-of-state log truckers from working in California on a seasonal basis.

7. No residency requirement was placed on the issuance of seasonal agricultural and livestock carrier permits in order to make available the largest possible pool of trucking equipment to haul unprocessed agricultural products and livestock during peak periods.

8. Log hauling is a specialized operation and is not similar to the hauling of unprocessed agricultural products or livestock.

9. Seasonal agricultural carriers and seasonal livestock carriers should be limited in their subhaul operations to the transportation of the same commodities that such carriers are authorized by statute to transport as prime carriers.

B. Cross-Subhauling in the
Dump Truck Field

10. There are approximately 5,600 carriers holding dump truck permits.

11. The principal commodities transported in bulk in dump truck equipment by for-hire carriers are earth, rock, sand, gravel, and

asphalt. Those commodities are primarily used in the construction of airports, roads, freeways, buildings, and private homes (subdivisions).

12. The construction business in California is cyclical. A low point in the cycle was reached in mid-1980. Construction activity had been substantially higher in late 1978 and early 1979.

13. Because of the cyclical nature of the construction industry, few dump truck carriers maintain large fleets of equipment.

14. It is the general practice in the construction industry for a contractor, transit-mix company, paving company, or other shipper to employ a single dump truck carrier to meet the shipper's transportation needs.

15. The dump truck carrier dealing with the shipper generally operates as an overlying carrier (prime carrier) and hires subhaulers to perform the actual transportation services.

16. It has been the growing practice within the dump truck industry over the past several years for overlying carriers to own or lease trailing equipment and to contract with tractor-only subhaulers (pullers) to pull the overlying carriers' trailers.

17. When overlying carriers own or lease trailing equipment and employ pullers, such pullers are generally dispatched ahead of subhaulers that furnish both the motive equipment and trailers (full-unit subhaulers).

18. Since unlimited cross-authority subhauling was approved by Decision No. 91247, large dump truck overlying carriers have increased their trailer fleets and, to the same extent, have increased the numbers of pullers in their employ.

19. Many of the new pullers employed by dump truck overlying carriers have contract carrier or agricultural carrier permits and do not have dump truck carrier permits.

20. There has been a decline in the number of dump truck jobs available in recent months because of the general downturn in construction activity in California.

21. Because of the reduced amount of dump truck work available and because of the practice of dump truck overlying carriers to hire contract and agricultural carriers as subhaulers, there has been less work available to full-unit dump truck subhaulers in recent months.

22. AIOO and BACTOC ask that the Commission restrict subhauling in the dump truck field to carriers holding dump truck permits.

23. CDTOA proposes that the Commission permit limited cross-authority subhauling in the dump truck field. Under CDTOA's proposal nondump truck carriers could subhaul for dump truck carriers only on a seasonal or other as-needed basis when there is a shortage of dump truck subhaulers.

24. CCA asks that the Commission continue its policy adopted in Decision No. 91247 under which unlimited cross-authority subhauling is permitted in the dump truck field.

25. Our order in Decision No. 91836 stated that the limited rehearing granted therein was for the purpose of exploring policy reasons for preserving some limitation on dump truck subhauling.

26. The fact that the increasing use of pullers (some of whom hold dump truck carrier permits and some of whom hold contract or agricultural carrier permits) by dump truck overlying carriers may displace full-unit subhaulers holding dump truck carrier permits is not a sufficient reason to change Commission policy expressed in Decision No. 91247 concerning unlimited cross-authority subhauling.

27. The public will be adequately served whether pullers or full-unit dump truck carriers are employed as subhaulers by dump truck overlying carriers.

28. In its reregulation orders the Commission has adopted a general policy of fostering competition between carriers as means of developing a healthy and adequate for-hire transportation system. Maintaining a policy of unlimited cross-subhauling in the dump truck field is consistent with that general policy.

29. The policy expressed in Decision No. 91247 as set forth in Findings of Fact 1 through 9 and Conclusions of Law 1 through 3 thereof is reasonable and should be continued with respect to dump truck carrier operations.

Conclusions of Law

1. Appendix B to Decision No. 91247 should be amended as shown in Appendix C attached hereto.

2. In all other respects the Commission policy with respect to cross-authority subhauling as expressed in Decision No. 91247 is affirmed.

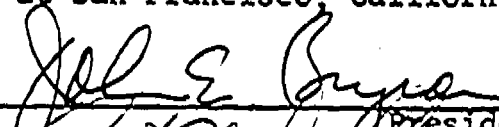
ORDER ON REHEARING

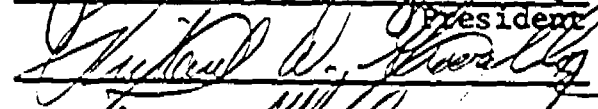
IT IS ORDERED that:

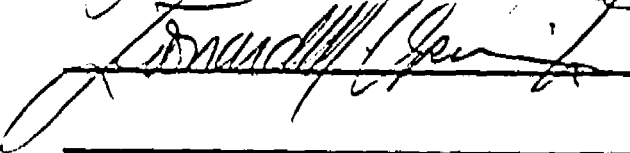
1. Appendix B to Decision No. 91247 in this proceeding is amended as set forth in Appendix C to this order.
2. In all other respects Decision No. 91247 shall remain in full force and effect.

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

Dated JAN 21 1981, at San Francisco, California.



President




Commissioners

APPENDIX A

LIST OF APPEARANCES

Respondents: Walker Brown, for Walker Brown Trucking, Inc.; Les Calkins, for Les Calkins Trucking; Dorothy J. Flanders, for Flanders Trucking; Theodore W. Fritz, for himself; Kenneth P. Harrison, for Harrison-Nichols Company, Limited; Armand Karp, for D & R Transfer Co., Inc., Rogers Motor Express, Chacon Transportation, Inc., and Marino Bros. Trucking Co.; Lee Pfister, for Willig Freight Lines; J. S. Shafer, Jr., for Trucking by J. S. Shafer; and Linda Spangler, for Spangler Trucking.

Interested Parties: Cornelious Steward, for MTTDC-West, Minority Trucking Transportation Development Corporation; Allen R. Crown, Attorney at Law, for California Farm Bureau Federation; James R. Foote, for Associated Independent Owner-Operators, Inc.; Jackson R. Gualco, for Agricultural Council of California; Graham & James, by David J. Marchant, Attorney at Law, and Charles Touchatt, for California Carriers Association; Joseph A. Wheelock, Jr., Attorney at Law, and James D. Martens, for California Dump Truck Owners Association; David N. Nissenberg, Attorney at Law, for Associated Independent Owner-Operators, Inc. and Bay Area Construction Truck Owners Coalition; Don B. Shields, for Highway Carriers Association; Richard W. Smith, Attorney at Law, and Charles D. Gilbert, for California Trucking Association; William A. Taylor, for Cannery League; Scott Wilcott, Attorney at Law, and J. Grant Vincent, for Conrock Co.; and Philip K. Davies and Frank Spellman, for themselves.

Commission Staff: Alvin S. Pak, Attorney at Law.

APPENDIX C

AUTHORIZED SUBHAULING BETWEEN HIGHWAY CARRIERS

PRIME CARRIER SUB-HAULER	HIGHWAY COMMON	PETROLEUM IRREGULAR ROUTE	CONTRACT	CEMENT CONTRACT	AGRICULTURAL	SEASONAL AGRICULTURAL	LIVESTOCK	SEASONAL LIVESTOCK	DUMP TRUCK	PETROLEUM CONTRACT	HOUSEHOLD GOODS	CEMENT CARRIER	HEAVY SPECIALIZED	TANK TRUCK	VACUUM TRUCK
	HIGHWAY COMMON	YES	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	YES	YES
CONTRACT	YES	YES	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	YES	YES
AGRICULTURAL	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
SEASONAL AGRICULTURAL	YES*	NO	NO*	NO	YES*	YES	NO	YES	NO	NO	NO	NO	NO	NO	NO
LIVESTOCK	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
SEASONAL LIVESTOCK	YES**	NO	NO	NO	NO	YES	YES	YES	NO	NO	NO	NO	NO	NO	NO
DUMP TRUCK	YES	YES	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	YES	YES
HOUSEHOLD GOODS	YES	YES	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	YES	YES
HEAVY SPECIALIZED	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
TANK TRUCK 1/	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
VACUUM TRUCK 1/	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES

* Subhauling limited to fresh fruits, nuts, vegetables, and unprocessed agricultural commodities only.

** Subhauling limited to livestock only.

1/ Senate Bill 1886, effective January 1, 1981.