

T/HEC/BW

JAN 21 1981

ORIGINAL

Decision No. 92634

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application )  
of: Guthmiller Trucking, Inc., a )  
California Corporation, for )  
authority to deviate from the )  
provisions of General Order 102-G )  
in connection with the time for )  
payment of subhaulers. )

Application No. 60093  
(Filed November 19, 1980)

OPINION AND ORDER

By this application Guthmiller Trucking, Inc. (Guthmiller) a California corporation, seeks authority to deviate from the provisions for the payment of monies owed to subhaulers as established in General Order 102-G.

General Order 102-G requires payment as follows under paragraph 5.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."

Guthmiller seeks approval to establish payments as follows:

- a. For shipments completed between the first and fifteenth day of the month, payment shall be made on or before the fifth day of the following month.

- b. For shipments completed between the sixteenth day and the last day of the month, payment shall be made on or before the twentieth day of the following month.

This pattern of payment set forth in a. and b. above was the method of payment followed by Guthmiller prior to the 15-day requirement set by General Order 102-G. Guthmiller had established its internal accounting procedures so that on those fixed calendar days each month a payment was made to the subhaulers. The payments due to subhaulers under the Guthmiller method range from 20 to 34 days after the transportation has been completed.

In Case No. 10278 (Phase II - Topics 5 and 6) the Commission issued Decision No. 91247 dated January 15, 1980 adopting General Order 102-G. This decision was issued after a public hearing which was attended by Guthmiller's representative (Eldon M. Johnson, Attorney at Law). Reviewing the decision, a staff policy witness presented recommendations that payment be required to a subhauler within ten days after the completion of the transportation service.<sup>1/</sup> The Commission's Legal Division staff position concluded, "(t)hat the Commission should only attempt to impact those 'fairness' or 'safety' questions which are susceptible to regulation."<sup>2/</sup>

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<sup>1/</sup> Decision No. 91247, at page 8.

<sup>2/</sup> Id., at p.10.

The Commission in its discussion determined:

"(s)ubhaulers 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 3/ independently of the overlying carrier with which they engage."

Further the Commission states,

"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 4/ public of the service performed by these individuals."4/

The staff's proposal was modified after 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

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3/ Id., at p.18.

4/ Id., at p.25.

parties, including many overlying carriers, supported the staff proposal that payment be made within 15 days. The staff's conclusion: "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."<sup>5/</sup>

With regard to the present Guthmiller application, it has been noted that Guthmiller was represented by counsel at the public hearings held on this matter. The staff, from the "Motor Carrier Annual Reports to the Commission" as filed by Guthmiller, has compiled the following data:

GUTHMILLER TRUCKING, INC.

<u>YEAR</u>	<u>GROSS ANNUAL REVENUE</u>	<u>PAYMENT MADE TO SUBHAULERS</u>	<u>PERCENT OF GROSS REVENUE PAID TO SUBS</u>
1975	\$3,322,313	\$2,204,776	66.36%
1976	4,452,827	3,002,123	67.42%
1977	5,511,289	3,674,750	66.68%
1978	6,295,535	4,206,642	66.82%
1979	7,279,699	4,724,067	64.89%

The application details no justification for the sought change in payment dates to subhaulers other than established accounting procedures which would have to be modified. From the data above, it should be noted that the monies paid to the subhaulers by Guthmiller are quite substantial. From this data another inference

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<sup>5/</sup> Id, at p.33

can be made: the business is mainly conducted on revenues earned by the operations of subhaulers. These subhaulers are experiencing and paying the daily out-of-pocket expenses necessary for the continuance of Guthmiller's traffic.

The granting or denying of this application will neither enhance nor be adverse to the Commission's energy efficiency goals.

Pertinent Findings of Fact From Decision No. 91247:

"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."

\* \* \*

"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."

\* \* \*

"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."

"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."

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"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."

Finding of Fact

Guthmiller Trucking, Inc., has introduced no new factors not addressed in Decision 91247, Case 10278. The above findings of fact are relevant to this proceeding and are adopted for purposes of this opinion.

Conclusion of Law:

The application should be denied.

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IT IS ORDERED that Application 60093 is denied.

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

Dated JAN 21 1981, at San Francisco, California.

John E. Bryson  
President  
Michael B. Powell  
Donald M. Smith

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Commissioners