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Decision No. 93146 JUN 2 1981

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of CALIFORNIA TRUCKING ASSOCIATION, to amend the provisions governing the bonding requirements of General Order 102-G.	Application No. 59014 (Filed July 18, 1980; amended November 12, 1980, December 2, 1980, and January 13, 1981)

(For appearances see Appendix A)

O P I N I O N

In this application, California Trucking Association (CTA) seeks amendment of General Order No. 102-F (GO 102-F). Through successive amendments the authority sought has been substantially changed from the original application, in part because of the adoption of GO 102-G, effective November 7, 1980.[1/]

Public hearing was held before Administrative Law Judge J. W. Mallory in San Francisco on April 29, 1980 and January 19 and 20, 1981. The matter was submitted upon receipt of written statements of position on February 6, 1981.

Background

GO 102-G contains rules governing bonding requirements in connection with subhauling or leasing of equipment from an employee. The General Order applies to all highway carriers of property. GO 102-G contains definitions pertinent to this decision as follows:

> a. 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

1/ By Resolution 18080 dated October 8, 1980, the Commission adopted GO 102-G to become effective November 7, 1980 to supersede GO 102-F.

other carriers to perform all or part of the services which such 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.

b. Subhauler (underlying carrier) means any carrier who renders 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.

The General Order provides that no carrier shall engage a subhauler until it has on file with the Commission a bond in the amount of $10,000. The bond is to secure the payment of claims of subhaulers and sub-subhaulers.

In addition, the General Order specifies that (a) an agreement in writing must be executed by the overlying carrier and subhauler, (b) the agreement must specify the amount to be paid the subhauler, (c) the time period in which payments by overlying carriers to subhaulers must be made, (d) the form of the subhaul bond, and (e) the manner in which claims against the bond should be made.

Decision No. 91247 dated January 15, 1980 in Case No. 10278 added provisions as follows:

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

(b) The overlying carrier must file with the Commission and post in his place of business a schedule of charges to be paid to the subhaulers.

(c) A prime carrier engaging subhaulers must maintain a separate subhauler register showing, among other things, the gross and net amount due the subhauler and the date the subhauler was paid.

Protest to Original Application

The principal change sought by CTA in its original application was an increase in the amount of the subhaul bond to $50,000. Evidence was presented in the initial phase of the proceeding in support of that change by a member of CTA's staff and by the owner of an agency issuing surety bonds. The original application was protested by Highway Carriers Association (HCA) with respect to the increase in the amount of the bond. The last amendment to the application seeks an increase in the bond to $15,000. HCA does not oppose an increase of that amount.

CTA's Proposals

CTA seeks several changes in GO 102-G, some of which are minor in nature and were not opposed. We will discuss the major changes and those which were opposed under separate headings.

CTA's Exhibit 8 sets forth in detail the manner in which it proposes that GO 102-G be amended. Exhibit 7 of California Carriers Association (CCA) contains a proposed modification of CTA proposals concerning the furnishing of rated freight bills to subhaulers. No other specific amendments of GO 102-G are sought herein.

Amount of the Bond

Sections 1074 and 3575 of the Public Utilities Code require that all classes of highway carriers that engage subhaulers or that lease equipment from employees file a surety bond with the Commission in an amount of not less than $2,000. The initial amount

of the bond established pursuant to Code Section 1074[2/] and 3575 was $5,000 (Decision No. 52462 (1956) 54 CPUC 615). The original General Order has been amended several times. The current General Order requirement for a $10,000 bond was established by Decision No. 72365 dated May 2, 1967 in Case No. 5670 (unreported).

As heretofore indicated, HCA protested an increase in the amount of the bond to $50,000 principally because most overlying carriers would find it difficult to qualify for a bond of that amount. The testimony adduced by the surety bond agent at the original hearing indicated that carriers would need to have collateral on deposit with the surety company in an amount equal to the bond amount, or would require working capital of at least five times the face amount of the bond ($250,000 for a $50,000 bond). Few highway carriers could meet those requirements. The record also showed that cost of the $50,000 bond, itself, may be excessive.

CTA's staff witness testified in the subsequent phase of the proceeding that its revised proposal, that the bond be increased to $15,000, is based on the industry consensus as to the need for an increase to provide the same relative level of protection as the bond provided at the time the bond amount of $10,000 was established. In arriving at an industry consensus, other motor carrier associations were consulted.

2/ For example, Section 1074 of the Code reads as follows:

"1074. Every highway common carrier, cement carrier and every petroleum irregular route carrier who engages subhaulers or leases equipment from employees shall file with the commission a bond, the amount of which shall be determined by the commission but which shall be not less than two thousand dollars ($2,000), executed by a qualified surety insurer, subject to the approval of the commission, which bond shall secure the payment of the claims of subhaulers and employee-lessors of the highway common carrier, cement carrier or petroleum irregular route carrier. The aggregate liability of the surety for all such claims shall, in no event, exceed the sum of such bond."

No opposition to the increase in the bond to $15,000 was expressed by any party to the proceeding. The Commission staff concurs in the increase, for the reason that inflation has eroded the protection afforded to subhaulers by the bond, and the proposed increase restores the relative value of the bond to about the same level as the $10,000 bond when that amount was established.

The evidence indicates that carriers should not have difficulty in qualifying for a $15,000 bond.

In the circumstances, the proposed increase in the bond amount to $15,000 will be reasonable and is justified. GO 102-G will be amended accordingly.

Furnishing Copies of Rated Bills

GO 102-G provides that:

> "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."

CTA proposes to amend the foregoing provision to read as follows:

> "In instances where the subhauler is paid on a percentage of the freight bill revenue, the prime carrier (other than agricultural carriers) shall make available to the subhauler, upon request, a rated copy of the freight bill or 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."

CCA proposes to amend this provision as follows:

> "In instances where the subhauler is paid on a percentage of the freight bill revenue, the prime carrier shall make available to the subhauler, upon request, a rated copy of the freight bill or 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, and/or except in those instances where payments to subhaulers are made pursuant to Items 126 and for 210 of MRT 7-A, and Items 255 and 460 of MRTs 17-A and 20. 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."

The rationale of the Commission underlying the adoption of the requirement that subhaulers be furnished rated copies of freight bills is expressed in Decision No. 91247 (mimeographed pages 34 and 35) as follows:

> "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 M.C 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 reasonableness of present compensation and in negotiating future compensation. Any privileged information may be deleted 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."

CTA presented evidence through carrier witnesses and its staff in support of its request. A carrier engaged in hauling exempt agricultural commodities (Exhibit 4) testified that overlying carriers engaged in that type of transportation contract with a cannery or processor for the hauling to be performed during the six- to eight-week harvest season at charges which include services other than transportation services. The carrier engaged by the

cannery or processor cannot maintain a fleet of equipment sufficient to meet the shippers' needs during the short harvest season, so it is the universal practice to engage subhaulers. The overlying carrier posts a schedule of subhaul payments on a per ton or flat rate per load at the beginning of the movement for each cannery or processor; the subhaulers are paid on that schedule. As the contract between the overlying carrier and processor is for a specified amount, as the contract may cover nontransportation services, and as the billing from the overlying carrier to the processor covers multiple loads for a two-week or greater period, furnishing a copy of the paid billing to the subhauler is meaningless and serves no useful purpose.

The carrier further testified that if the General Order provision in issue requires separate billing for each load hauled by a subhauler, extra office personnel would need to be hired, which would substantially increase the overlying carrier's operating costs. If each load must be individually billed, the cost could not be passed on to the cannery or processor. Therefore, that additional cost, of necessity, would be deducted from the amount paid to the subhauler. The witness testified his company uses subhaulers for 3,000 to 3,500 loads per season.

Another carrier engaged in exempt agricultural hauling and in the transportation of general commodities developed in Exhibit 6 stated the estimated cost for his company to produce and mail each copy of rated freight bills would be 81 cents. Postage costs for each settlement, which includes several rated freight bills, are estimated to be 65 cents.

The cost estimates furnished by carrier witnesses of reproducing a rated freight bill range from 81 cents to $3.39.

Each carrier witness in this proceeding testified they also subhaul. Each testified they knew in advance the amount of

money they were to be paid. Each stated they had no need for a copy of the revenue bill. They had sufficient information prior to hauling to determine whether to accept or reject the freight and payment offered. Additionally, they have access to what other prime carriers are paying for any type of haul. They testified that they now possess the information on subhaul payments necessary to enable them to exist in a competitive market.

A witness appearing for Rice Growers Association of California testified in opposition to the requirement that subhaulers be furnished copies of rated freight bills on agricultural movements. This witness explained that the hauling contracts negotiated by the rice mills are considered to be privileged and the mills do not want the information to be made public so that competitors may use such information. Multiple services may be involved in the hauling contract. The charges for such services, and the entity responsible for providing such services are of no importance to the subhauler, but are of great importance to the mill's competitors.

A carrier of wine in bulk (an exempt commodity) testified that different rates are assessed depending upon the availability of hauls, the loading and unloading conditions, and the facilities maintained by the shipper. The carrier does not desire to inform shippers of the differences in charges through the furnishing of a rated freight bill to the subhauler.

A carrier engaged in the transportation of steel construction materials from steel mills to jobsites also testified in opposition to the current requirement. The carrier stated that he employs subhaulers for a portion of the through movement and uses his own equipment for other parts of the through movement. For example, steel mills require loading to be conducted on a schedule that prevents a buildup of material in the mill's loading area. The carrier loads the steel on its trailers and takes the loaded

trailers to its terminal or yard, using its own material equipment. Subhaulers are used to move the steel from the terminal or yard to destination or to another terminal or yard of the carrier. If the steel is delivered by the subhauler to the carrier's yard, another subhauler or the carrier's own equipment is used to effect final delivery. Often two or more loads constitute a shipment. Each load in the shipment is handled by a different subhauler.

The steel hauler testified that furnishing a copy of the rated freight bill to the subhauler in the circumstances described in the preceding paragraph is meaningless, as the subhauler has no way of correlating the total charge received to the value of the partial service performed by the subhauler.

CTA's staff witness testified that, in his opinion, the requirement that rated freight bills be furnished to subhaulers serves no useful economic purpose. For general commodity transportation, the precise rates of the overlying carrier are available to the public generally in the overlying carrier's filed tariff or contract. Moreover, the posting of a subhauler schedule, as required by the General Order, assertedly provides the subhauler with all the information he needs to make a reasoned decision on whether he will accept or refuse a subhaul transaction. Furnishing the rated freight bill after the movement has been performed is of no benefit to the the subhauler, because he is not in a position to renegotiate his charge for the completed movement.

CCA's witness, a dump truck prime carrier testified in support of CCA's amendment to CTA's proposal. CCA's witness stated that specific divisions of minimum rate revenues are provided in the dump truck tariffs (Minimum Rate Tariffs (MRTs) 7-A, 17-A, and 20). Subhaulers in the dump truck field are universally paid on the minimum basis provided in the dump truck tariffs. The requirement that dump truck subhaulers be provided with rated copies of freight bills

provides no information to subhaulers of any value to them, and the requirement is costly for the overlying carrier to comply with. Moreover, Decision No. 91247 indicated that dump truck subhauling was a specialized area of subhauling governed by separate rules, and that General Order provisions in conflict with those rules should not apply to dump truck subhaulers.

Most carrier witnesses testified that they are not complying with the General Order requirements for furnishing rated freight bills.

The issue was argued extensively by the parties. California Teamsters Public Affairs Council (Teamsters) argued as follows: The information provided pursuant to the current provision aids the subhauler in determining whether he is receiving reasonable compensation for his work and, more generally, enables him to judge whether his relationship as a subhauler for a prime carrier is a worthwhile one. The fact that the subhauler received the rated freight bill at the conclusion of the haul does not reduce its usefulness for the following two reasons: (1) there is a strong likelihood that the subhauler will have occasion to haul identical or similar loads for either the same prime carrier or another prime carrier with similar operating factors, and that knowledge of the revenue generated by the previous haul will be useful in determining the reasonableness of the compensation offered for the subsequent haul; and (2) the information may be crucial in a decision by the subhauler to compete in the future as a prime carrier both for the particular business previously handled as a subhaul and for business in general. The information provided is not useful merely as a check on the amount of payment when a subhauler is paid on a percentage of the revenue basis. Rather, Teamsters contends that the information is an essential element of a total package of information that enables subhaulers to make informed business judgments. Other elements of that package of information, such as the miles and hours

involved in a shipment, the weight of a shipment, and the types of roads traveled, can be determined from sources other than a rated freight bill. However, the revenue generated can be determined only from the rated freight bill itself.

Teamsters states it has an interest in seeing that the subhaulers are provided with the information necessary to determine that they are reasonably and fairly compensated, and an interest in seeing that employees do not lose work to subhaulers who are not reasonably compensated. Teamsters argues that if a subhauler operates at a loss or at marginal profitability, Teamster employee members will lose jobs. Teamsters asserts that under the competitive atmosphere brought on by reregulation, there will be pressure on carriers to lower rates, and therefore, pressure on subhaulers to accept less compensation. Teamsters believes that the Commission should ensure that these subhaulers, who otherwise may be taking jobs away from employees while not even receiving reasonable compensation themselves, are provided with the basic information necessary to make an informed judgment regarding the worthiness of their endeavor.

The Commission staff believes that further experience under the GO 102-G requirements should be gained before any change is made in those requirements.

All other parties support the proposed revision of GO 102-G. Canners League of California (Canners League) stated that it is concerned about that provision of GO 102-G which would require that subhaulers be informed of the amounts paid to prime carriers by canners employing prime carriers. The movement of raw agricultural commodities has long been exempt from rate regulation by the Commission. This exemption has not only applied to rate levels, but also the form in which a canner and a carrier enter into an

agreement to provide service. The carrier does not even prepare separate freight bills, but rather the transportation is provided on a contractual basis. This contract has historically been negotiated in a circumstance where the contract price has been kept strictly confidential. In the canning business all canners are extremely competitive, and rate levels, prices, and other related items are always considered to be confidential. Canners League asserts that to now require that aspect of canner negotiations be disclosed to subhaulers would result in eroding a business practice which has developed both flexibility and cost-efficiency. Canners require a transportation system that is able to provide a high level of dependable service over a short period of time on a seasonal basis. Canners rely upon prime carriers to assemble large fleets of subhaulers for a short period of time. Approximately 90 percent of the huge annual pack of canned fruits and vegetables is hauled and processed in about 90 days. Canners League believes that disclosure of the level of rates which canners pay to the prime carriers would result in disintegration of the subhauling system and would eventually require that canners have literally hundreds of separate contracts in order to have raw commodities moved, which would be an impossible situation.

Sagara Trucking Inc. (Sagara), a carrier engaged in exempt agriculture transportation, argued that the evidence shows that exempt agricultural movements are in a peculiar category by themselves. The Commission has chosen not to regulate the rates or impose requirements as to billing rules or any other rule with regard to these types of movements. If the present GO 102-G remains in effect with regard to exempt moves, it will in effect impose freight bill preparation rules where none exist now. The cost of this will be substantial as has been shown by the evidence of record.

In addition, the requirements of preparing freight bills during the short harvest seasons associated with agricultural movement would be particularly onerous as there are literally thousands of movements which take place within a short two-month period. Finally, as has been indicated by a witness for the Rice Growers Association, the relationship between the carriers and the shippers in the agricultural area is one of extreme confidentiality. An entire system of transportation which responds on short notice has been developed relying upon this confidentiality. Enforcement of GO 102-G would essentially destroy that situation, and most likely the system. Sagara also points out that there are no representations by subhaulers that rated freight bills are required by subhaulers in the conduct of their business.

California Dump Truck Owners Association (CDTOA) stated that its members have no problems with payment to dump truck subhaulers under current tariff provisions governing divisions of revenues; however, CDTOA favors the retention of present provisions.

Discussion

Our purpose in requiring the furnishing of rated freight bills to subhaulers was the same as for the requirement that overlying carriers file with the Commission and post in their office the charges to be paid subhaulers. That purpose was to provide sufficient information to subhaulers to permit them to bargain more equally with overlying carriers. It now appears that of the two provisions, the posting of subhauler charges by overlying carriers provides a greater benefit to subhaulers than the furnishing of rated freight bills, in that the freight bill information is received by the subhauler well after the transaction is completed. On the other hand, the posted subhauler charges are the basis for subhauler-overlying carrier negotiations.

The difficulties testified to by the steel hauler in complying with the requirement in issue do not represent isolated instances as often subhaulers perform only a segment of the total transportation represented in the rated freight bill, such as when more than one load is combined to form a single shipment. The subhauler cannot relate the total charges to the portion of the shipment for which he was responsible, therefore, the freight bill information is of little value to him.

Rated freight bill information is of special value to a subhauler when his charges are determined as a percentage of the revenue earned by the overlying carrier. Under CTA's proposal a subhauler will be furnished a copy of the rated freight bill on request when the subhauler's charges are determined in that manner.

There is no support in the record for the contention of Teamsters that the furnishing of rated freight bills to subhaulers provides subhaulers with the only source of meaningful information that may be used in negotiating subhaulers' charges. On the other hand, there is substantial data in the record that shows the requirement places an extra administrative burden on the overlying carrier. That extra cost will be shifted to the subhauler or shipper; thus, subhaulers will receive less for their services, or shippers must pay more. Considering that shippers have greater bargaining powers, the extra cost probably would be shifted to subhaulers.

Based on the record herein, it appears that the material benefits which may accrue to subhaulers from the requirement in issue are not as great as we expected and the administrative burden placed on overlying carriers may be greater than we anticipated. We will eliminate from the General Order the general requirement that subhaulers be furnished rated freight bills. However, we will retain a requirement that upon request of a subhauler, the prime carrier

must permit the subhauler to inspect the rated freight bills covering the transportation performed by the subhauler, except for exempt agriculture hauling and dump truck transportation.

Subhaul Register

GO 102-G provides that:

"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."

The rationale for this provision, as set forth in Decision No. 91247 (mimeo. page 35) is as follows:

"The principal purpose advanced for the proposed subhaul register is to aid the staff in the enforcement of GO 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."

CTA proposes that agricultural carriers and seasonal agricultural carriers be exempted from the requirements of maintaining a subhaul register because of the conditions surrounding the transportation of exempt agricultural commodities as previously described.

Carriers engaged in transporting exempt agricultural commodities testified in support of the proposed amendment.

Compliance with this provision by agricultural carriers would cause them to incur a large additional expense. The provision was designed for carriers that issue freight bills for each load or each shipment, whereas exempt agricultural carriers bill the shipper for multiple loads, generally showing on the billing the total weight or number of loads transported during the billing period. The operations of exempt agricultural carriers do not lend themselves to ready compliance with the provisions. California Farm Bureau and California Rice Growers support this revision. No party opposes the revision.

CTA's proposal is reasonable and should be adopted.

Employment of Sub-subhaulers

GO 102-G provides that a prime carrier shall not engage any unauthorized carrier as a subhauler or sub-subhauler.

CTA requests that such provision be amended to read as follows:

> "Unauthorized carriers shall not be engaged as subhaulers or sub-subhaulers. It shall be the responsibility of the carrier (prime carrier, subhauler, or sub-subhauler, as appropriate) actually engaging services of the subhauler or sub-subhauler to comply with this requirement."

The evidence shows that sub-subhaulers are engaged by subhaulers to complete the transportation when the subhauler's equipment breaks down, or the transportation service undertaken by the subhauler cannot be completed by it. Generally, the prime carrier is not informed by the subhauler that a sub-subhauler has been employed and, therefore, should not be responsible for determining that the sub-subhauler is an authorized carrier.

CTA's proposal places the burden upon the subhauler of determining that only authorized sub-subhaulers are employed, which is the proper entity given the circumstances under which sub-subhaulers are employed. CTA's proposal should be adopted.

Subhaul Agreements

The General Order requires that subhaul agreements shall be reduced to writing and executed by the prime carrier and presented to the subhauler prior to, or within five days after, commencement of the subhaul service.

CTA proposes that the following provision be added:

> "Failure of the prime carrier or lessee-carrier to reduce an agreement to writing as specified herein shall constitute a violation of this general order, but shall not be cause for rejection or denial of any claim by the surety."

The evidence offered in support of the above recommendation is as follows: Subhaulers' claims have to be rejected by bonding companies when the subhaul agreement has not been reduced to writing, even though the subhaul service has been performed.

In addition to the General Order requirement, Form TL 679 furnished by our staff to bonding companies specifies that the obligation of the bonding company applies only to agreements complying with the General Order. Surety companies use this as defense to avoid payments to subhaulers under the surety bond, even though the subhauler has actually performed the service.

CTA's revision assertedly would ensure that subhaulers can collect from the surety company under the bond, even though a written agreement has not been prepared. The Commission staff supports this proposal, stating it believes that a deficient instrument or lack of an instrument covering the subhaul agreement should not be cause for denial of a claim by the surety company.

CTA's proposal appears reasonable and should be adopted.

Payment Period

GO 102-G provides that the prime carrier shall pay to the subhauler the charges specified in the agreement within 15 days after completion of the shipment (excluding Saturdays, Sundays, and holidays). CTA proposes to revise the period in which payment must be made to 20 days after completion of the shipment.

Decision No. 91247, supra, shortened the payment period from 20 days to 15 days. The decision states:

> "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."

CTA's proposal is to restore the former provisions of the General Order.

CTA presented evidence to show that the shortening of the period forces prime carriers to advance monies to subhaulers prior to collection. Such an advance assertedly becomes an operating cost to the prime carrier. The evidence was designed to show that under the "collection of charges" rules in Commission transition and minimum rate tariffs (except drayage and dump truck tariffs) carriers must collect freight charges from shippers within seven working days after presentation of the freight bill. The total time involved for preparation and mailing of the freight bill and collection of charges from the shipper is approximately 14 working days.

Carrier witnesses testified that the industry custom is to pay subhaulers on a bimonthly basis. The 20-day provision is applicable to all dump truck transportation.

CTA asserts that its proposal to increase this period to 20 days will bring the maximum payment period more into conformity with the Commission's prescribed credit rules; will give prime carriers the opportunity to timely bill, collect, and process freight bill payments prior to disbursement to the subhaulers; and will also allow retention of the bimonthly subhauler payment method now prevalent in the industry and thus reduce bookkeeping costs.

No party to the proceeding objected to the reestablishment of a 20-day payment period for subhaulers.

The record shows that prime carriers can collect their freight charges within the present 15-day period. Subhaulers should not have to wait an additional five days to receive their charges. The risk of late-collection or noncollection by the prime carriers should not be shifted to the subhauler. The present provisions are reasonable and should be retained.

Filing of Claims with Surety

CTA asks that a new provision be added to the terms of the bond which will provide that claims shall be paid by the surety in the order of the date of filing suit.

CTA's purpose in proposing this addendum is to achieve earlier filing of claims by subhaulers and, thus, earlier payments to subhaulers should the prime carrier fail to pay promptly.

According to the testimony of the surety agent in the earlier phase, no payment will be made to claimants unless a civil suit is filed. When claims are filed, the surety checks with the prime carrier to determine why subhaulers are not being paid. If the carrier cannot pay outstanding claims, the bond is canceled, preventing the prime carrier from employing subhaulers. Payments under the bond are not made until the surety is certain of its total liability. In the event the total amount of the claims exceeds the face amount of the bond, the subhaulers are paid on a pro rata basis. Subhaulers are now reluctant to file claims under the bond because of the need to file suit to collect, so as not to incur the ill will of the overlying carrier, and because only a pro rata payment is generally forthcoming.

Assertedly, if the first claimant can be assured of full payment, the subhauler will be encouraged to make an early filing under the bond. An early filing would alert the surety company that the prime carrier is in financial trouble before the carrier gets too far behind in its payments to its subhaulers. These actions assertedly would improve the effectiveness of the bond.

CDTOA opposes this provision. CDTOA argues that the provision would not be fair to all carriers. It states that on a certain day many subhaulers are employed by a dump truck overlying carrier. If the prime carrier failed to pay within the prescribed period, the first claimant may be entitled to all or most of the monies available under the bond. CDTOA also believes that in eagerness to file first, subhaulers will file a claim within one day after the date payment is due causing prime carriers uncalled-for problems with their bonding companies.

We have carefully considered the asserted benefits of the proposed revisions and have weighed them against the adverse effects expected by the opponent to the change and conclude that there has not been shown a sufficient need to make the proposed change. We do not believe the record contains sufficient information concerning the reasons bonding companies act as they now do in processing claims. The record does not show whether surety companies are agreeable to such a change, or whether the proposed change would place added burdens on the bonding company which may cause the companies to change their requirements for the issuance of bond or raise the cost of the bond. In the circumstances, this proposal will not be adopted.

Application to Deviate from Requirements of General Order

GO 102-G contains no provisions governing requests to deviate from the requirements of the General Order.

CTA proposes to add a new section to the General Order setting forth the manner in which applications must be filed which seek authority for a bond in a lesser amount than specified in the General Order.

The conditions specified are that a formal application must be filed; only subhaulers or sub-subhaulers named in the application may be used; and such subhaulers or sub-subhaulers must certify in writing that they agree to a bond in an amount less than specified in the General Order.

This request was part of CTA's original proposal. Testimony in connection with that proposal indicated that only 20 to 25 percent of present overlying carriers could meet the financial requirements for a $50,000 bond and that other carriers would have to seek deviations from the General Order to continue to operate as overlying carriers. Under CTA's revised proposal for a $15,000 bond the preponderance of the present overlying carriers can qualify.

The Transportation Division staff objected to the formalization of requests to deviate from the General Order. The staff introduced Exhibit 9, a copy of Commission Resolution No. 18104, dated January 6, 1981, as an example of the informal procedures now used by the staff to process such requests. According to the staff representative, letter requests are accepted. Those requests are investigated by the staff and, if deemed appropriate, action thereon is recommended to the Commission by presenting a proposed resolution authorizing or denying the request. Assertedly, such requests are few; less staff time would be required under current informal procedures than if CTA's proposal is adopted.

It is clear that CTA's proposal would be needed if a large number of requests to deviate from the amount of the bond were expected to be filed. However, under its revised proposal, we do not expect any more requests than we now receive. Present staff practices have proven to be satisfactory to handle that number of requests. Therefore, CTA's proposed procedures are unnecessary and will not be adopted.

Findings of Fact

1. The current level of the subhaul bond required by Code Sections 1074 and 3575 was set at $10,000 in 1967.

2. Since that date inflation has decreased the amount of the protection accorded subhaulers under the bond.

3. An increase in the face amount of the subhaul bond to $15,000 will partially restore the relative value of the protection accorded by the bond.

4. The preponderance of the existing overlying carriers can financially qualify for a $15,000 subhaul bond.

5. A subhaul bond in the amount of $15,000 will be reasonable and is the minimum required to guarantee payment of charges to subhaulers by overlying carriers.

6. Decision No. 91247, supra, adopted GO 102-G which contained revised rules governing relationships between overlying carriers and subhaulers.

7. The provisions of GO 102-G became effective November 7, 1980.

8. Included as a new provision in GO 102-G were the requirements that (a) overlying carriers furnish copies of rated freight bills to subhaulers, and (b) that overlying carriers maintain a subhaul register containing a record of payment to subhaulers by freight bill number.

9. A substantial added operating expense is incurred by overlying carriers in order to furnish rated freight bills to subhaulers.

10. Overlying carriers are required by Ordering Paragraph 3 of Decision No. 91247 to file with the Commission and to post in their office a schedule of rates to be paid for subhaul service.

11. Subhaulers rely upon the posted schedule of subhaul rates in negotiating charges for subhaul engagements.

12. A copy of the rated freight bill is furnished after the subhaul engagement has been completed.

13. The subhauler and overlying carrier are bound by the terms of the subhaul agreement entered into prior to or at the time of the performance of the service by the subhaulers. Copies of rated freight bills are of less value to the subhauler than the posted schedule of subhaul rates once the transportation service is completed.

14. The information concerning rates assessed by overlying carriers (except for exempt transportation) can be obtained from the overlying carrier's filed tariff or contract, which are public documents, or by inspection of the rated freight by the underlying carrier.

15. Shippers of rate-exempt commodities oppose the furnishing of rated freight bills because of the information contained therein concerning the amount and type of traffic transported and the freight charges paid to the overlying carrier.

16. Under CTA's proposal, rated freight bills will be furnished upon request of the underlying carrier when the subhaul charges are based on a percentage of the revenue earned on the shipment.

17. In all other instances the requirement that rated freight bills be furnished to subhaulers places an unwarranted administrative burden on the overlying carrier. Underlying carriers may obtain the same information by inspection of the rated freight bills.

18. Dump truck minimum rate tariffs specify the division of minimum rate revenues between overlying carriers and subhaulers. Copies of rated freight bills are unnecessary for dump truck transportation, and copies should not be required upon request of a subhauler.

19. Carriers engaged in exempt agricultural hauling contract with canners and processors at the beginning of the harvest season to provide services under a fixed rate per ton or load. Subhaulers are furnished a schedule of rates at the start of each harvest. The cannery or processor is billed for the total number of tons or loads handled in a bimonthly period. No separate billing is made for each shipment transported.

20. The operations of agricultural carrier and seasonal agricultural carriers are sufficiently different from those of carriers of general commodities so that compliance with the subhaul register requirements is extremely difficult.

21. It will be reasonable to exempt agricultural carriers and seasonal agricultural carriers from the requirements concerning maintenance of a subhaul register.

22. Sub-subhaulers are generally employed by subhaulers when the subhauler's equipment breaks down or in some other similar circumstance. Overlying carriers often do not know when sub-subhaulers are employed.

23. It will be reasonable to amend GO 102 to provide that overlying carriers are not responsible for determining whether sub-subhaulers are licensed carriers.

24. The lack of an executed written subhaul agreement should not prevent subhaulers from filing claims with surety companies under the subhaul bond.

25. Overlying carriers can collect charges from shippers within the 15-day period in which they are required to pay subhaulers.

26. The largest group of subhaulers are employed in the dump truck field. The minimum rate tariffs governing dump truck transportation provide for payment to subhaulers within a period not to exceed 20 days following the last day of the month in which the transportation was performed.

27. Except for transportation subject to the dump truck tariffs, it will be reasonable to retain the 15-day payment period for subhaul transportation in GO 102.

28. The proposal that the claims against the bond must be paid by the surety in the order that such claims are filed will create an unreasonable preference for the carrier filing first in the circumstances where the total liability is greater than the face value of the bond.

29. Need has not been shown for changing the current practice concerning the priority in which claims filed with surety companies must be paid.

30. Existing informal procedures concerning handling requests for a reduced subhaul bond are adequate and sufficient.

31. Need has not been shown for requiring that a formal application be filed as a prerequisite to the authorization of a reduced subhaul bond, nor establishment of restrictive circumstances under which the amount of the bond may be reduced.

32. The following order has no reasonably foreseeable impact upon the energy efficiency of highway carriers.

Conclusions of Law

1. General Order 102 should be revised in accordance with the preceding findings.

2. General Order 102-H (Appendix B hereof) should supersede General Order 102-G, and the revised General Order should be served on all carriers.

3. General Order 102-H should become effective 60 days after the effective date of this order in order to provide ample notice to carriers of the increase in the bond amount.

4. To the extent not granted herein, Application No. 59014 should be denied.

O R D E R

IT IS ORDERED that:

1. General Order No. 102-H (Appendix B to this order) is adopted to supersede General Order No. 102-G effective sixty days after the effective date of this order.

2. The Executive Director shall cause a copy of this order to be mailed to every highway carrier ten days prior to the effective date of this order.

3. To the extent not granted herein, Application No. 59014 is denied.

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

Dated JUN 2 1981, at San Francisco, California.

President

Commissioners

Commissioner Priscilla C. Grew, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A

LIST OF APPEARANCES

Applicant: Richard W. Smith, Attorney at Law, for California Trucking Association.

Protestant: Don Shields and Paul Krieger, for Highway Carriers Association.

Interested Parties: L. E. August, for August Enterprises and August Insurance Services, Inc.; James D. Martens, for California Dump Truck Owners Association; Graham & James, by David J. Marchant, Attorney at Law, Charles Touchatt, and Louie Asborno, for California Carriers Association; C. E. Goacher, for Di Salvo Trucking Co.; Allen R. Crown, Attorney at Law, for California Farm Bureau Federation; Silver, Rosen, Fischer & Stecher, by John Paul Fischer, Attorney at Law, for Sagara Trucking, Inc.; Alan Edelstein, Attorney at Law, for California Teamsters Public Affairs Council; George Raymond and Mark Mizuki, for Bayview Trucking, Inc.; Glenn Mizuki, for Independent Contract Carriers; Robert J. Sternes, for Tri-Valley Trans., Inc.; James H. Luther, for Diamond Bar Express Co., Inc.; Gary A. Naman, for himself; Larry Young, for Young's Commercial Transfer Co.; Jerry J. Jackson, for Mammoth of California; Rinhardt Kiehn, for Bernie Gorman, Jr., Trucking Co.; Joseph F. Gaio, for Guthmiller Trucking, Inc.; Lynn Hoagland, for Hoagland's Transport Service, Inc.; Vic Sward, for Sward Trucking, Inc.; Hugo Kaji, for Hugo Kaji Trucking; John Teresi, for Teresi Trucking., Inc.; Gary Scannavino, for Scannavino Trucking; Donald G. Bunker, for Associated Transportation; William D. Mayer, for Del Monte Corp.; Donald M. Fennel, for Cascade Drayage; Larry D. Boland, for Statewide Transport Service, Inc.; and Donald Bain, for Wally Albright Trucking.

Commission Staff: James D. Westfall and Theodore Peceimer.

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 60 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 thereof.

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.

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA

Joseph E. Bodovitz

By JOSEPH E. BODOVITZ
Executive Director

1. Name and T-number of the subhauler.
2. Freight bill number 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. In case of conflict between this paragraph and the provisions of a minimum rate tariff of this Commission, the minimum rate tariff shall apply.

b. In instances where the subhauler is paid on a percentage of the freight bill revenue, the prime carrier (other than agricultural or seasonal agricultural carriers) shall make available to the subhauler, upon request, at or before the time of settlement a rated copy of the freight bill or bills. In the instance where the subhauler is paid on a different basis, the prime carrier (other than agricultural or seasonal agricultural carriers) shall permit inspection of the original rated freight bill or freight bills upon request by the subhauler. The foregoing provisions do not apply 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, where payments to subhaulers are made under the provisions of Minimum Rate Tariffs 7-A, 17-A, and 20. A prime carrier may take reasonable steps to delete confidential information from the freight bill furnished the subhauler but 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 canceled 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 or 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 $15,000 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.

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. Failure of the prime carrier or lessee-carrier to provide an agreement as specified herein shall constitute a violation of this general order, but shall not be cause for rejection or denial of any claim by the surety.

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 termination of the agreement.

d. Every prime carrier engaging subhaulers, except an agricultural carrier as defined in Section 3525 of the Public Utilities Code, or a seasonal agricultural carrier as defined in Section 3584.2 of the Public Utilities Code, 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:

GENERAL ORDER NO. 102-H

(Supersedes General Order No. 102-G)

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 JUN 2 1981. Effective AUG 3 1 1981.

(Decision No. 93148, Application No. 59014)

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:

Unauthorized carriers shall not be engaged as subhaulers or sub-subhaulers. It shall be the responsibility of the carrier (prime carrier, subhaulers, or sub-subhauler, as appropriate) actually engaging services of the subhauler or sub-subhauler to comply with this requirement.