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Decision 93472

AUG 18 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on)
 the Commission's own motion to)
 prepare and adopt rules and)
 regulations which would relieve)
 compensated intercorporate)
 transportation of property from)
 licensing and transportation)
 rate regulation.)

OIR 3
 (Filed November 18, 1980)

A. J. Shields, for Hunt Wesson Foods, Inc.;
Martin J. Rosen, Attorney at Law, for Lucky
 Stores, Inc.; Alan Edelstein, Attorney at
 Law, for California Teamsters Public Affairs
 Council; Richard W. Smith, Attorney at Law,
 for California Trucking Association; Philip K.
 Davies, for himself; and L. Filipovich, for
 General Drayage; respondents.
Jess J. Butcher, for California Manufacturers
 Association; Don B. Shields, for Highway
 Carriers Association; James D. Martens, for
 California Dump Truck Owners Association;
Patrick W. Pollock, for Louisiana-Pacific
 Corporation; Jack R. Collingwood, for
 Chevron U.S.A. Inc., Marketing Operations -
 Traffic; Eddie E. Daniels, for Private Truck
 Council of America, Inc.; John F. McMahon,
 for Tri-Valley Growers; Richard L. Bredeman,
 for B. R. Garcia Traffic Service; and
Henry E. Manker, for Private Carrier Conference
 of ATA, Washington, D.C.; interested parties.
William C. Bricca, Attorney at Law, and Dorothy Ligon
 for the Commission staff.

O P I N I O N

This rulemaking proceeding was instituted on the Commission's own motion to consider the adoption of a policy which would grant compensated intercorporate hauling (CIH) relief from the need to obtain highway carrier operating authority and to observe rate regulation. CIH refers to the transportation of property for compensation over the public highways by a corporation for another corporation when both such corporations are members of the same corporate family. A corporate family is defined as a parent corporation and all subsidiary corporations in which the parent corporation owns, either directly or indirectly, a 100% interest.

A copy of the Order Instituting Rulemaking (OIR) along with a general order proposed by the Commission's Transportation Division staff (staff) to implement the relief was mailed to all highway carriers and known interested persons and organizations. The OIR invited the filing of written comments on the proposed general order or on alternate proposals and set a date for oral argument.

Written comments were received from Hunt-Wesson Foods, Incorporated (Hunt-Wesson), Cannery League of California (Cannery League), The Martin-Brower Company (Martin-Brower), SCM Corporation (SCM), California Manufacturers Association (CMA), Private Carrier Conference of the American Trucking Associations, Inc. (PCC), Lucky Stores, Inc. (Lucky), Wilsey, Bennett Co. (Wilsey), California Trucking Association (CTA), and California Teamsters Public Affairs Council (Teamsters). In addition, many letters on the subject were received by the Commission.

Oral argument on the proposed general order was held before Commissioner Gravelle and Administrative Law Judge Pilling on February 6, 1980 at San Francisco. Representatives of the following organizations appeared and orally argued on the matter:

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the staff, Hunt-Wesson, Lucky, CMA, CTA, PCC, General Drayage, California Dump Truck Owners Association (CDTOA), and Private Truck Council of America, Incorporated (PTCA). At the conclusion of the oral argument the presiding officer requested the filing of briefs on the legal issues involved in the proceeding, particularly on whether the Commission has authority to effectively adopt the proposed policy. Briefs were filed by the staff, Hunt-Wesson, CMA, Lucky, PCC, Highway Carriers Association (HICA), Louisiana-Pacific Corporation (LPC), and CTA.

The staff and parties representing shippers and private carrier associations urge the adoption of the policy. The Teamsters do not oppose the policy as long as subhauling is not permitted. CDTOA and General Drayage express doubts on the benefits to be derived from the policy. CTA and HICA oppose the adoption of the policy, particularly on legal grounds.

Background

In administering the licensing provisions of the Highway Carriers Act (HCA) the Commission historically has taken the position that a corporation was required to obtain operating authority from the Commission before hauling the property of another corporation regardless of the affiliation or degree of affiliation between the two corporations. For example, while PU Code Section 3511(b) exempts "(p)ersons or corporations hauling their own property" from regulation under the HCA, the Commission has never previously recognized that a parent corporation and its 100%-owned carrier subsidiary together constituted a single corporate enterprise coming within this exemption. More than 22% of the operating authorities issued by the Commission are held in the name of permittees affiliated in some degree with shippers. Most of these operating authorities are not restricted to CIH operations but allow hauling for the general public.

In administering the rate provisions of the HCA and rate regulations the Commission has required a CIH operator, like any other permittee, to conform to such provisions and regulations when

hauling for compensation the property belonging to another member of its corporate family. Compensation received by a CIH operator for such hauling was also held by the Commission to be taxable under the business license tax provisions (PU Code Sections 4301-11) and to be assessable under the rate fund fee provisions (PU Code Sections 5001-11). As in the matter of licensing, the Commission, in the matter of rate regulation, did not recognize that a parent corporation and its 100%-owned subsidiary together constituted a single corporate enterprise so as to free a CIH operator from conforming with rate regulations or to relieve it from liability for the payment of the business tax or rate fund fee based on its compensation from CIH. Compensation received from transporting commodities which were administratively exempted from rate regulation was also subject to the business license tax and rate fund fee.

In Decision 90354 dated May 22, 1979, which was superseded by Decision 91861, dated June 3, 1980, the Commission, recognizing a need for regulatory change, established a program known as reregulation, abolishing minimum rates for general freight and allowing carriers to set their own rates, subject to Commission review and review upon complaint. As will be seen, the reregulation program has prompted a new view of Section 3511(b).

OIR 3 was also prompted by Congress' enactment of Section 9 of the Federal Motor Carrier Act, which amended 49 U.S.C. 10524 to relieve interstate CIH operators from Interstate Commerce Commission regulation. OIR 3 was further prompted by staff's belief that uniformity of federal and state standards in respect to CIH operations is desirable.

Finally, as background, Chapter 983, Statutes of 1980, amends the California Vehicle Code to require most operators of commercial highway vehicles in this State to maintain public liability and property damage insurance at least at the levels required by the Commission to be maintained by highway carriers under its jurisdiction.

Contentions of the Parties

We have summarized separately below the salient contentions of the staff, Lucky and CTA. The staff brief and Lucky's brief reflect the combined contentions of the parties who favor adopting the proposed policy and CTA's brief reflects the contentions of the parties who oppose that policy.

In its brief the staff contends, primarily, that the HCA was never intended by the Legislature to regulate transportation between members of a corporate family. The HCA, the staff asserts, was intended to only regulate arm's-length dealings between corporations engaged in the business of transportation for the shipping public and, since dealings between members of a corporate family are not at arm's-length, the HCA was never intended to apply to CIH. It bases its contention on the wording of the preamble to the HCA (PU Code Section 3502)^{1/} and calls on the Commission to correct its previous erroneous application of the HCA to CIH. The staff points out that the reasoning which apparently led to the Commission's conclusion that the HCA applied to CIH--the desire to protect the integrity of the Commission's minimum rate system from a device to subvert it--no longer exists in view of the Commission's^{2/}

^{1/} PU Code Section 3502 reads in part: "The use of the public highways for the transportation of property for compensation is a business affected with a public interest. It is the purpose of this chapter to preserve for the public the full benefit and use of public highways consistent with the needs of commerce without unnecessary congestion or wear and tear upon such highways; to secure to the people just and reasonable rates for transportation by carriers operating upon such highways; and to secure full and unrestricted flow of traffic by motor carriers over such highways which will adequately meet reasonable public demands by providing for the regulation of rates of all transportation agencies so that adequate and dependable service by all necessary transportation agencies shall be maintained and the full use of the highways preserved to the public..."

^{2/} "Reregulation" proceedings have been completed for tank and vacuum truck commodities (see Decision ^{9186!} ~~9066~~) and are in process or actively contemplated for all commodities subject to minimum rate tariffs *and, for general freight (see 90663).*

reregulation program abolishing the minimum rate system for general freight. The staff contends the Commission is not prevented from changing its policy where the general welfare warrants such action, citing San Diego v California Water and Telephone Co. (1947) 30 C 2d 817, 826, as stated in City of Chicago v Federal Power Commission (D.C. Cir. 1967) 385 F 2d 629, 637. The staff concludes that rate levies between members of a corporate family are, in the final analysis, bookkeeping transactions. Even cutthroat CIH transactions would not adversely affect the transportation system or the availability of transportation for the general public.

Lucky contends that PU Code Section 3511(b),^{3/} when properly construed, exempts CIH from regulation by the Commission. It likens CIH to one division of a corporation hauling for another division and argues that regulating CIH blindly permits form, not substance, to determine the Commission's jurisdiction. Lucky sees no difference in regulatory significance between transportation performed by a corporation for one of its divisions or for a separate wholly owned corporation and points out:

"In the former case, the corporation is likely to charge back a transportation fee from one profit center to another. In the latter case, the subsidiary corporation is likely to pay a fee or charge to its parent in return for the transportation services performed. In both cases, the transportation related expense will be added to the overall expenses of the corporation or corporate family as the case may be. In both cases, the ultimate impact of the transportation charges will be felt by the same person(s), i.e., by the person(s) holding the stock of the single corporation or through that corporation of the corporate family as a whole... When the overall corporate revenues and expenses are tallied, what is gained by one corporation is lost by another, resulting in a wash... This Commission simply must find that there is no substantial justification for engaging in regulation with no more impact than to alter the internal accounting entries of a corporate family."

^{3/} PU Code Section 3511(b) excludes persons or corporations hauling their own property from the definition of "highway carrier" and so exempts such persons and corporations from Commission regulation under the HCA.

Lucky foresees substantial benefits to be gained by exempting CIH from Commission regulation. They are:

1. Consistent treatment for interstate and intrastate CIH.
2. Elimination of substantial empty miles by CIH carriers.
3. Improved fuel and other operational efficiencies.
4. Consolidation of shipments by CIH carriers.
5. Allowing corporate families to assess realistic transportation charges.

Lucky argues that even if the Commission at one time determined that CIH was for-hire transportation it has the continuing authority to change that determination. In support of its argument it states:

"If an agency decides that a law or principle which it has previously declared is now unsound and ought not to be followed, neither estoppel, stare decisis, res judicata, or any other doctrine can prevent it from creating new law and applying it prospectively. Davis, Administrative Law Text, 3rd Ed P.352. The construction of the statute by the agency charged with administering it, even though long-standing, is not binding on that agency or its successors if thereafter the agency becomes satisfied that a different construction should be given Alstate Constr. Co. v. Durkin 345 U.S. 13, 97 L. Ed 745, 73 S. Ct. 565 ('more experience with the Act together with judicial construction of its scope convinced its administrators that the first interpretation was unjustifiably narrow'), American Chicle Co. v. United States, 316 U.S. 450, 86 L. Ed 1591, 62 S.Ct. 1144; Association of Clerical Employees v. Brotherhood of R. & S.S. Clerks (CA. 7 Ill) 85 F2d 152, 109 ALR 345; Faingaert v. Moss, 295 NY 18, 64 NE2d 337; Utah Hotel Co. v. Industrial Com. 107 Utah 24, 151 P2d 467, 153 ALR 1176; Stillman v. Lynch, 56 Utah 540, 192 P 272, 12 ALR 552 (omission to assess cannot control successors); 2 Am. Jur. 2d, P.63. Prior administrative practice is always subject to change through exercise by the administrative agency of its continuing

rulemaking power. Commissioner v. P. G. Lake, Inc. 356 U.S. 260, 2 L. Ed 2d 743, 78 S. Ct. 691, Reh. Den. 356 U.S. 964, 2 L. Ed 2d 1071, 78 S. Ct. 991. This is because an administrative agency does not, as a general rule, exhaust its power to make rules and regulations by having made a particular enactment. Consequently, as regards future action, there is generally no objection to modification, alteration or rescission of legislative enactments previously made by an administrative agency. Helvering v. Wilshire Oil Co. 308 U.S. 90, 84 L. Ed 101, 60 S. Ct. 18, Reh. Den. 308 U.S. 638, 84 L. Ed 530, 60 S. Ct. 292 (Treasury Regulation); Arizona Grocery Co. v. Atchison, T. & S. F. R. Co. 284 U.S. 370, 76 L. Ed 348, 52 S.Ct. 183 (Interstate Commerce Commission); Am. Jur. 2d, 'Administrative Law' Section 310."

Opposing staff and Lucky, CTA contends the Commission cannot by interpretation negate the licensing requirements of the PU Code nor create a new classification of business for licensing purposes; Industrial Communications Systems, Inc. v. Public Utilities Commission (1978) 22 C 3d 580 and Television Transmission, Inc. v. Public Utilities Commission (1956) 47 C 2d 82. Nor does the Commission's program of reregulation (cancellation of minimum rates) allow the Commission to redefine the licensing statutes. CTA argues that CIH is transportation of property for compensation and that the only exclusion from regulation allowed such an operation is if the transportation is in furtherance of the hauler's primary business enterprise other than transportation. The CIH proposal will allow a legal entity, with no primary business enterprise interest in the property being transported, to avoid regulation even though its only interest in the property involved is to transport it for compensation. Further, CTA sees no increased efficiency or monetary or fuel savings in exempting CIH from regulation since the involved property is currently moving either in proprietary carriage or in for-hire carriage. While tonnage diverted from for-hire carriage to CIH may increase the efficiency of CIH carriers, CTA believes it will do so only at the expense of a decrease in the efficiency of for-hire carriage.

Discussion

We have decided to adopt the staff proposal because in our view, exempting CIH from regulation will not change the current pattern of transportation in California in any material respect. For all intents and purposes CIH is proprietary transportation performed by one member of a corporate family for another. We can no longer permit form to dominate over the substance of this transportation. Once the parent company has committed the necessary investment in equipment and facilities and has created the personnel structure to operate and manage an intercorporate transportation system, it is committed to use that system. The property hauled is not, as CTA contends, being hauled for compensation, i.e., for the sake of revenue generation. The corporation does not "make money" at all. The property is hauled because the corporate parent directs that it be hauled. The "charges" involved are mere bookkeeping entries, as they transfer funds from one corporate pocket to another one, so to speak, the same corporate pair of pants.

Exempting CIH from rate regulation would have no adverse impact on shippers competing with the corporate family involved in CIH, as CIH payments remain within the corporate family. There is no more impact than any other form of proprietary operations. This order would similarly have no adverse impact on for-hire carriers as they would not enjoy the CIH transportation in any case, whether the traffic is rate-exempt or not. We stress again that this order merely simplifies the corporate arrangements necessary for proprietary operations. Licensing requirements would have no direct impact on competing shippers or upon for-hire carriers since minimal license fees do not constitute a significant component in transportation costs. No matter whether property moves in for-hire carriage or CIH traffic, the transportation cost must still be rolled into the ultimate cost of the product. Hence there is no significant competitive impact from this decision. In sum, this order places corporate families' proprietary operations on the same footing as single corporation proprietary operations.

We recognize that circumstances surrounding CIH have substantially changed since the HCA was enacted, and since we made our initial determination that CIH was subject to that statute. The multiple and complex intercorporate relationships such as those underlying CIH did not exist to any great extent when HCA was enacted. The Commission interpretation that CIH required a permit and was subject to minimum rates was largely premised on the perceived need to protect the integrity of the minimum rates, as well as to ensure that all for-hire carriers had adequate public liability and property damage insurance. Also, CIH contributed a share of the taxes needed to maintain our enforcement and rate-setting activities, through payments to the Transportation Rate Fund.

Since our original construction of §3511, the circumstances surrounding CIH have materially changed. The circumstances under which the Commission previously made CIH subject to regulation were based on the simpler corporate structures existing at that time. Complex corporate structures have gradually evolved as a result of the many corporate mergers and acquisitions occurring in recent years. Two examples of this phenomenon in these proceedings were Lucky Stores, Inc. and Hunt-Wesson Foods, the latter of which is a subsidiary of Norton Simon, Inc., a huge conglomerate.

We have embarked on a program of rate reregulation looking to a time when carriers make their own rates subject to certain regulatory restraints. We have cancelled minimum rates on general commodities and have entered into a transition period in the rate reregulation program. All parties agree that there is no need to regulate CIH in order to protect the integrity of the minimum rates.

The need to require regulation of CIH to ensure that CIH carriers maintain adequate public liability and property damage insurance no longer exists, as all commercial vehicle operators must now maintain public liability and property damage insurance in the same minimum amounts that we require for for-hire carriers.

The Transportation Rate Fund has excess funds and there is no need for contributions to that fund from CIH.

No reasonable regulatory purpose is now served by regulating CIH as for-hire carriage.

CTA alleges that the statutes require that we license CIH operations. We have required permits of CIH operators in the past based on our long-standing interpretation of §3511. That Section reasonably can be interpreted to exclude CIH from the definition of highway carrier. When circumstances change, administrative agencies may give a different construction to a statute if the agency is satisfied that its first interpretation is no longer useful, appropriate or necessary. It is clear from the record in this proceeding that circumstances have changed since our initial construction of §3511 and that a changed construction that would exclude CIH from the definition of highway carrier is now appropriate.

Additional reasons for exempting CIH from regulation are the following: Exemption of CIH will achieve a uniform and consistent regulatory approach to CIH on both the interstate and intrastate level. The flexibility of operations resulting from the ability of CIH carriers to combine interstate and intrastate shipments in the same vehicle and to transport an intrastate shipment in one direction in combination with an interstate shipment in an opposite direction promotes more efficient transportation services. This advances the Commission's Energy Efficiency Plan adopted in D. 92541.

~~We note that the exemption from regulation created by this decision can exist only if the CIH carrier engages exclusively in CIH operations.~~ For reasons of operating convenience and efficiency or to provide service to unaffiliated suppliers or buyers, CIH carriers often have engaged in for-hire carrier operations as highway common carriers or highway contract carriers. All for-hire operations continue to be regulated by this Commission and require observance of filed tariffs or contracts.

For those operators that engage ~~exclusively~~ in CIH, the exemption clears away those regulatory restrictions which prevent purely proprietary trucking operations to be conducted as such. The establishment of this exemption is a further step in the Commission's continuing program of eliminating unnecessary regulatory restraints on the free market system in transportation.

Currently, when CIH carriers engage in for-hire operations, they often employ subhaulers to perform the actual transportation service for the public. We caution CIH carriers that when operations are conducted under the exemption granted in this proceeding, they may not employ subhaulers to perform the service. If any outside hauler is used to perform the actual intercorporate transportation service, such carrier is a prime carrier in a for-hire capacity and must hold operating authority from the Commission. Such carrier must observe the minimum rates where applicable or the otherwise applicable published tariff or contract rates for all transportation services performed for the corporate shipper.

We have reviewed the level of the filing fee paid for registration of CIH operations. This filing fee of \$150 is the same as the fee for the transfer of a highway permit or certificate. The full cost of administrating and enforcing the exemption should be borne by the exempt carriers as they would pay no other fees to the Commission.

Findings of Fact

1. OIR 3 was instituted as a rulemaking proceeding to consider the adoption of a policy which would grant CIH relief from the need to obtain highway carrier operating authority and to observe rate regulation.
2. A copy of the OIR, along with a proposed general order to implement the policy, was mailed to all highway carriers and known interested parties and organizations.
3. Interstate CIH operators recently were relieved from having to abide by the certificate and rate provisions of the Interstate Commerce Act.

4. Twenty-two percent of the operating authorities issued by the Commission are held in the name of shipper-affiliated permittees.

5. The Commission historically has considered CIH to be subject to the operating right and rate regulation provisions and to the business license tax and rate fund fee provisions of the PU Code.

6. The property transported in CIH service is property owned by the CIH carrier or a member of the same corporate family.

7. The overall corporate family revenue and expenses are not affected by the level of intercorporate charges paid for CIH.

8. No preference or discrimination results where a CIH carrier charges its corporate affiliates less than the otherwise legal rate, since a CIH carrier ^{essentially is engaging in proprietary} ~~offers service to no one else~~ _{business}

9. Little or no diversion of traffic from independent for-hire carriers to CIH operations is anticipated to result from relieving CIH carriers from regulation under the HCA. ✓ Rm

10. No benefit from a public regulation standpoint is achieved by requiring CIH carriers to abide by operating right and rate provisions of the PU Code when hauling for a member of its corporate family.

11. The circumstances surrounding CIH have materially changed since the Commission initially interpreted the HCA to require rate and licensing regulation of CIH, in the following respects:

(a) Corporate structures have become more complex resulting in more conglomerates consisting of many corporations engaged in diverse enterprises;

(b) The Commission has embarked on a program of rate reregulation with the ultimate objective of carrier-made rates replacing minimum rates. In implementing that program, general commodity minimum rate tariffs have been cancelled.

(c) The preponderance of intrastate motor carrier transportation involves general commodities, for which there are no longer any minimum rates.

(d) CIH has been exempted from ICC regulation on the federal level, and there is need for uniformity of regulation of CIH transportation at the federal and state level to avoid conflicting rates and so that CIH carriers can fully realize the efficiencies resulting from the federal action.

12. No competing shippers or carriers will be adversely affected and no detriment from a public regulation standpoint will ensue by exempting commodities moving in CIH service from regulation established under the PU Code.

13. CIH carriers should not be permitted to use subhaulers for the transportation of property moving in CIH service.

14. The provisions of the general order attached at Appendix A are reasonable, necessary and appropriate for CIH traffic.

Conclusions of Law

1. Our prior construction of the PU Code (particularly HCA §3511(b)) is no longer appropriate and a different construction now should be given to §3511(b) because of the changed circumstances set forth in the above findings.

2. It is reasonable to construe §3511(b) to exclude CIH from the definition of highway carrier set forth in §3511, as CIH involves persons or corporations, through their own trucking operations, hauling their own property. Where a carrier operation or carrier corporation 100% owned by a parent corporation hauls property of another corporation 100% owned by the same parent, it is hauling its own property within the meaning of §3511(b). Accordingly, CIH operations are exempt from Commission regulation. *outside the Commission's jurisdiction and*

3. No useful regulatory purpose is served by continuing the requirement that CIH carriers obtain operating authority from this Commission or that they observe minimum rates.

4. The exemption of CIH from the rate and operating right provisions of the PU Code will result in no undue or unlawful discrimination nor will it adversely affect other shippers or carriers competing with the CIH corporate family.

5. The Commission should, by general order, relieve CIH carriers from having to abide by the rates and operating right provisions of the PU Code.

6. The general order attached as Appendix A will achieve the purpose of relieving CIH ^{carriers} carriers from having to abide by the Commission's regulations established under the PU Code when hauling for members of its corporate family. /
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7. The general order attached as Appendix A should be adopted by the Commission.

O R D E R

IT IS ORDERED that:

1. General Order 146 as set forth in Appendix A is adopted to become effective October 19, 1981.

2. The Executive Director of the Commission shall cause a copy of General Order 146 to be served by mail on each highway carrier of property holding a certificate or a permit issued under the Public Utilities Act, Public Utilities Code Division 1, Chapter 5 or the Highway Carrier's Act, Public Utilities Code Division 2, Chapter 1.

3. The Executive Director of the Commission shall cause a copy of this decision to be served on each party of record in this proceeding.

This order becomes effective 30 days from today.

Dated AUG 18 1981, at San Francisco,

California.

John E. Byron
President

Richard W. ...

Thomas ...

Victor ...

Pres ...
Commissioners

APPENDIX A

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General Order 146

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RULES IMPLEMENTING COMPENSATED INTERCORPORATE HAULING
EXEMPTION FOR HIGHWAY CARRIERS OF PROPERTY.Adopted August 18, 1981. Effective October 19, 1981.Decision 93472 in OIR 3.

1. Carriers subject to this order: ^{highway carrier} This General Order applies to any ~~corporation~~ that engages in transportation of property for compensation over the public highway for another corporation when the carrier and the corporation for which the transportation is provided are members of the same corporate family.
2. Definitions: (a) Corporate Family means a parent corporation and all subsidiary corporations in which the parent corporation owns, directly or indirectly, a 100% interest. (b) Compensated Intercorporate Hauling (CIH) means transportation of property for compensation over the public highways by a corporation for another corporation when both such corporations are members of the same corporate family. The definition of the word "corporation" is set out in Public Utilities Code Section 3507.
3. Scope: Compensated transportation service by a member of a corporate family for other members of the same corporate family (Compensated Intercorporate Hauling) is exempt from Commission transportation rate and operating authority regulation established under provisions of the Public Utilities Code, subject to notice requirements. To qualify for the exemption, companies must be members of the corporate family in which the parent owns, directly or indirectly, 100% interest in the subsidiaries.
4. Applicability: Highway carrier operations under the CIH referred to in paragraph 3 may commence on the date the notice required by this General Order is filed with the Commission.

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5. Notification: Whenever a corporation seeks to initiate exempt CIH it shall submit the following statement to the Commission's Transportation Division:

"NOTICE OF INTENT TO ENGAGE IN COMPENSATED
INTERCORPORATE HAULING OPERATIONS AS
AUTHORIZED BY GENERAL ORDER 146

"This is to provide notice as required by General Order 146 that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in such general order.

- "1. Name of parent corporation and address of principal office.
- "2. Wholly owned subsidiaries which will participate in the operations, and address of their respective principal offices as listed below:
- "a.
"b.
"c.

"All notices shall be submitted by the parent of the corporate family, by or for whose members proposed compensated intercorporate hauling operations are to be performed. The notice shall include the following affidavit from a person legally qualified to act on behalf of the parent corporation:

"I affirm that _____
is a corporation which directly or indirectly owns a
100% interest in the subsidiaries participating ~~to~~ in *RH*
compensated intercorporate hauling under General
Order _____, listed in the attached notice."

6. Changes in Participation in CIH:
- a. If the parent intends that an additional subsidiary participate in CIH, it must file an updated notice.

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- b. Whenever the interest which a corporation owns in a subsidiary participating in CIH becomes less than 100%, operations under General Order 146, by or for that subsidiary, must be discontinued at once, and the parent must file an updated notice within 10 days.
7. Filing Fees: A notice required by General Order No. 146, to engage in compensated intercorporate hauling or to change such notice on file with the Commission shall be accompanied by a fee of \$150.
8. Engagement of Subhaulers: Subhaulers as defined in General Order Series 102 shall not be engaged to provide transportation services subject to this General Order.
9. Daily Calendar: Notices of Intent to Engage in Compensated Intercorporate Hauling Operations and any changes shall be listed in the Commission's Daily Calendar.

Dated AUG 18 1991, at San Francisco, California.

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA

By 

Executive Director

(END OF APPENDIX A)