Decision 04-04-070 April 22, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application for Ex Parte Approval of an Interim Alternative Plan for Protection of the Public Pursuant to General Order 120-C, Sections 3(E) and 6.	Application 03-05-039 (Filed May 30, 2003)
Petition to Adopt, Amend, or Repeal a Regulation Pursuant to Public Utilities Code Section 1708.5.	Petition 03-05-040 (Filed May 30, 2003)

Carol Ann Rogers and Christine Kalakuka, for Professional Balloon Pilots Association, et al., Petitioners.
Robert C. Welker, for Protestant.
Patrick S. Berdge, Attorney at Law, for Transportation Enforcement Section of the Consumer Protection and Safety Division.

DECISION RESOLVING PETITION BY MANNED BALLOON OPERATORS TO AMEND GENERAL ORDER 120-C

1. Summary

In these two proceedings, hot air balloon operators in California (Petitioners) sought action by the Commission for relief from insurance requirements of General Order (GO) 120-C. Interim Decision (D.) 03-07-047, issued on July 22, 2003, provided a Modified Interim Plan intended to enable balloon operators to obtain insurance that complied with California law. Today's decision, following hearings ordered by the Commission, responds to the

petition to amend GO 120-C and replaces the Modified Interim Plan authorized in D.03-07-047. We conclude that insurance complying with GO 120-C has now become available to balloon operators and, therefore, major revision of GO 120-C is unnecessary. Nevertheless, based on the evidence at hearing, we make permanent some of the relief put forward in D.03-07-047 and we adopt a recommendation by staff regarding insurance for property damage and injury to persons on the ground. The revisions to GO 120-C are intended to encourage other insurers to provide coverage to this important tourist-oriented industry. These proceedings are closed.

2. Governing Law

The Legislature in Pub. Util. Code §§ 5500-5512 directed the Commission to require liability insurance for all commercial air operators operating aircraft in California.[1] "Commercial air operator" is defined in the statutes as "any person owning, controlling, operating, renting or managing aircraft for any commercial purpose for compensation." "Aircraft" is defined as "any contrivance used for navigation of, or flight in, the air." Section 5505 of the Code directs the Commission, after a public hearing, to set the amount of liability insurance "reasonably necessary to provide adequate compensation for damage incurred through an accident involving a commercial air operator.'

Pursuant to these statutes, the Commission in 1972 adopted a general order (now GO 120-C) that requires commercial air operators to procure liability insurance and to file evidence of that insurance with the Commission. When

[1] Federal law preempts the Commission jurisdiction over commercial airlines. (*See*, Airline Deregulation Act of 1978, 49 U.S.C. § 1305(a)(1).)

commercial hot air balloon operations began in California in the late 1970s, the Commission required the operators to comply with insurance requirements applicable to aircraft with a passenger seating capacity of from 1 to 20 persons, since most commercial balloons carry from 6 to 16 passengers. The insurance requirements are:

1) Passenger liability insurance of at least $100,000 per passenger seat per accident.
2) Bodily injury and death liability insurance for persons other than those aboard the aircraft of at least $300,000 per accident.
3) Property damage liability insurance of at least $100,000 for each accident. (GO 120-C(1)(A).)

Balloon operators are required to file evidence of their insurance with the Commission in the form of a copy of the policy certified by the insurance company, a detailed abstract of the policy, or, more commonly, by a certificate of insurance in a form approved by the Commission and signed by the insurance company. (GO 120-C(7).) The certificate of insurance form approved by the Commission is called the PE-794.[2] Among other things, the PE-794 obligates the insurance company to provide coverage for all flights operated by the balloon operator and to notify the Commission at least 30 days prior to any insurance cancellation.

The Commission is responsible only for establishing and enforcing the liability insurance requirements for commercial manned balloon flights. Hot air balloon operations themselves are governed by the Federal Aviation Administration (FAA). Airworthiness standards for manned balloons are set

[2] The "PE" designation stands for Passenger Engineering, the branch of the Commission responsible for the certificate at the time it was adopted.

forth in 14 CFR Part 31. Pilots and instructors must be licensed under 14 CFR Part 61. Operating and flight rules are set forth in 14 CFR Part 91. The FAA does not regulate insurance requirements for manned balloons.

3. Procedural History

Petitioners filed these two proceedings on May 30, 2003. Application (A.) 03-05-039, which we addressed in an expedited proceeding in D.03-07-047, sought temporary relief from GO 120-C requirements to enable balloon operators to obtain insurance during their peak flying season. Petition (P.) 03-05-040, which we address in today's decision, sought permanent changes in GO 120-C following public hearing and briefing by the parties.

On an undisputed showing that insurance complying with GO 120-C was no longer available to most balloonists, the Interim Decision authorized alternative ways to meet GO 120-C requirements during the peak ballooning months of May through October. However, it did not reduce the amount of insurance required, since under Pub. Util. Code § 5505 the amount of insurance can be changed only after a public hearing.

Following the Interim Decision, a Prehearing Conference was conducted on August 6, 2003, to consider the petition to amend GO 120-C. Assigned Commissioner Susan P. Kennedy filed a Scoping Memo on October 17, 2003, setting forth the issues to be considered at hearing. The hearing was conducted on November 18, 2003. The Commission heard from eight representatives of the balloon industry, two Napa County landowners, an insurance broker who had protested the application, and a spokesman for the Commission's Transportation Enforcement Section of the Consumer Protection and Safety Division (staff).

Opening briefs in this phase of the proceeding were filed on December 21, 2003, and reply briefs were due on January 16, 2004, at which time this matter was deemed submitted to the Commission for decision.

4. Factual Background

Commercial hot air ballooning was a relatively small industry in California until the 1980s, when it began expanding to serve customer demand. Today, approximately 50 companies offer balloon rides throughout California, carrying some 60,000 passengers per year and generating millions of dollars in tourist revenue. Balloon operations are concentrated in popular tourist regions, including the Napa Valley, Sonoma Valley, Palm Springs, Temecula, and San Diego areas.

There is no dispute that in early 2002, liability insurance that met the requirements of GO 120-C became unavailable to California balloon operators. In part because of the events of September 11, 2001, insurers had either withdrawn from this relatively small market in California or limited their proffer of insurance in a manner that the Commission's staff, under law, was unable to accept.

For example, Tudor Insurance Company (Tudor) was prepared to offer balloon insurance in California, but it limited the maximum liability of its coverage to $1 million, which does not provide the $100,000 liability per seat for larger balloons that is required by GO 120-C. Similarly, another willing insurer, New Zealand-based Contractors Bonding Limited (Contractors Bonding), which currently provides balloon insurance to 30% of balloons operated in the United States, is not an admitted insurer licensed to write insurance in California and

has not been added to the list of approved nonadmitted insurers maintained by the California Department of Insurance.[3] (*See* California Insurance Code §§ 1760, 1763.) Only admitted insurers and approved nonadmitted insurers are authorized to provide insurance in California.

Thus, as existing insurance policies lapsed and renewal was denied, balloon operators found themselves unable to comply with the Commission's insurance requirements. Commission staff, in turn, was required to issue "cease and desist" letters to operators demanding that they obtain the insurance required by law or cease operations.

In D.03-07-047, the Commission sought to provide interim relief to the balloonists. First, it allowed operators to limit their operation to fewer balloons and provide insurance only for those balloons, in contrast to the requirement of Section 8, GO 120-C, that all of the operator's balloons be covered. Second, it permitted operators to file affidavits limiting the number of passengers they would carry in order to comply with the $100,000-per-seat requirement. Finally, the Interim Decision established procedures permitting operators to set aside funds and self-insure part of their operations.

Two months later, in September 2003, the insurance problem facing California balloonists changed dramatically. Staff advised the Commission that an insurer, Houston Casualty Company (Houston Casualty), had begun offering

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[3] California Insurance Code § 1763 requires that a nonadmitted insurer must first be listed on the Department of Insurance List of Eligible Surplus Line Insurers (LESLI). Its insurance must be offered through what the Department of Insurance deems to be an eligible surplus line broker. Contractor's Bonding is not listed on LESLI. Tudor is listed on LESLI, but it had not at time of hearing offered its insurance through an approved surplus line broker.

balloon insurance that met all requirements of GO 120-C. Houston Casualty is a Texas-based nonadmitted insurer approved by the Department of Insurance, and its coverage is offered by a surplus line broker licensed by the Department of Insurance. Coverage includes per-occurrence limits of either $1 million or $2 million per policy, and Houston Casualty was prepared to sign the Commission's Form PE-794 as proof of insurance. At hearing in November 2003, staff reported that it had processed and accepted Form PE-794s from Houston Casualty on behalf of three California balloon operators.

Additionally, we take official notice that the Department of Insurance has recently recognized the difficulty that balloon operators face in obtaining liability insurance and has acted to widen the pool of available insurance. In December 2003, the Department of Insurance added "Hot Air Balloon Liability" to its 2004 Export List. The Export List includes risks for which there is little or no insurance market in California. In turn, this makes hot air balloon liability insurance eligible for placement with nonadmitted insurers and exempt from all requirements of Insurance Code § 1763 except for the filing of a confidential written report. (Department of Insurance Bulletin No. 2003-7, December 9, 2003.)

5. Issues Considered by the Parties

Petitioners argue that the availability of insurance through a single carrier is at best a temporary solution to their problems of insurability, since Houston Casualty, like other carriers before it, may withdraw from this limited market if profitability is disappointing. Petitioners urge more fundamental changes to California's balloon insurance laws, asking that the Commission cede its jurisdiction in this area or, failing that, redraft GO 120-C to reduce or eliminate its liability requirements. Staff and protestant oppose changes in GO 120-C,

although staff does suggest that the Commission reconsider the $400,000 requirement for property damage and injury to persons on the ground.

At the hearing on November 18, 2003, evidence was heard regarding adjudicatory facts as to these matters. In the discussion that follows, we will consider each of the proposals raised by parties at hearing and in their briefs.

5.1 Should the Commission Seek to Cede Jurisdiction?

Carol Ann Rogers, president of Napa Valley Aloft, Inc., testified that GO 120-C regulations were written at a time when commercial balloon operations did not exist, and their after-the-fact application to balloonists is unwieldy and unfair. She offered evidence showing that most other states with manned balloon operations regulate insurers through their state departments of insurance, but otherwise leave policy limits to the balloonists themselves.

Timothy Brady, western region director of the Balloon Federation of America, testified that accident and injury rates for ballooning are the lowest of any type of aviation, and that California balloonists lead the nation in fewest number of accidents. In his view, balloon rides should not be subject to the liability limits fashioned 30 years ago for engine-driven aircraft.

Petitioners urge the Commission to join with them in encouraging the Legislature to withdraw the Commission's jurisdiction over manned balloon insurance requirements. They propose that this be done by redefining the word "aircraft" in Sections 5500, 5501 and 5503 to include only "engine-driven" aircraft, and defining "balloon" as "a lighter-than-air aircraft that is not engine-driven."

In support of their proposal, Petitioners cite a report by the National Transportation Safety Board (NTSB) that during the 10-year period from January 1, 1992, through December 31, 2001, there were only 15 reported hot air

balloon accidents in California involving both occasional and professional balloon ride operators. The NTSB report showed that there were three fatalities in two of the accidents, as well as four accidents in which six of 39 passengers were injured. (Exhibit 1, at 13.)

Protestant Welker testified that, in his experience as a broker of manned balloon insurance, the industry experiences incidents that trigger insurance coverage but that are not required under FAA rules to be formally reported. He testified that the Commission's enforcement role is necessary to be sure that balloon operators keep insurance protection in place. Staff asserted that it takes no position on whether the Commission should or should not regulate balloon insurance limits, but it noted that the obligation exists and has been carried out for more than 20 years.

It is clear that under current law the Commission is required to regulate insurance limits for commercial balloon flights. The Legislature in Pub. Util. Code § 5503 mandated that the Commission "shall" require every commercial air operator to procure and continue in effect "adequate protection against liability." Petitioners make a good case that commercial balloon flights could not have been intended when the law was originally passed in 1963, and they are free to ask the Legislature to exclude them from the requirements of Pub. Util. Code §§ 5500-5512.[4] On this record, however, we are not prepared to join Petitioners in that

[4] We take official notice that the Legislature is considering bills to exclude hot air balloons from the liability requirements of Pub. Util. Code §§ 5500-5512. Assembly Bill 2430 and Senate Bill 1704 would redefine Section 5500 to exclude "any person owning, controlling, operating, renting, managing, furnishing, or otherwise providing transportation by hot air balloon for entertainment or recreational purposes."

request, absent a showing that another government agency would take the place of the Commission in enforcing minimum insurance requirements.

5.2 Should the $100,000 Passenger Liability Be Reduced?

GO 120-C requires a minimum of $100,000 liability insurance per passenger seat on all aircraft flown by a balloon operator. Petitioners' witnesses testified that most states other than California accept the type of insurance offered by Tudor and Contractors Bonding, with $1 million liability coverage per occurrence and no per-seat minimum requirement. On behalf of the Balloon Federation of America, Brady testified that Contractors Bonding, while barred in this state by California insurance regulations, was the insurer for the country's largest balloon gathering, the Albuquerque Balloon Fiesta, and that $1 million liability limits were accepted for the 800 balloons that took part in that event.

Other balloon company executives and pilots testified to the high levels of FAA training and low level of accidents attributable to commercial ballooning. Scott Vander Horst, president and chief pilot of Sonoma Thunder, Inc., stated that he has been flying balloons for 30 years, has transported more than 20,000 passengers, and has had only one reportable accident in his career.

Evidence presented by the balloonists showed that the average cost for a one-hour ride is about $200, and one witness suggested that those who can afford that cost presumably have sufficient life and health insurance to meet their needs in case of accident. Another witness noted that passengers are required to sign a liability disclaimer prior to flight that alerts them to the possibility of accident and potentially reduces any damage claim.

Paul Wuerstle, principal in the Transportation Enforcement Branch, testified on behalf of staff. He sponsored an exhibit (Exhibit 9) showing that, with few exceptions, the amount of personal injury protection required by

Commission general orders for modes of transportation other than balloons (*i.e.*, passenger stage coaches, vessel common carriers, charter party carriers, for-hire vessels) is generally $100,000 per passenger. He recommended against petitioners' request for a reduction of balloon liability amounts.

We are not persuaded that the $100,000-per-seat requirement should be changed. The only arguments in favor of reducing that amount are that balloon accidents are few and a number of insurers have a $1 million per occurrence limit on such insurance (which, presumably, would cover balloons with no more than 10 seats under GO 120-C standards). On the other hand, all parties agreed that today's costs of any serious injury are likely to exceed $100,000. Until the recent decline in number of insurers available, insurance at the $100,000-per-seat level has been available to balloonists in California for more than 20 years.

The evidence shows that at least one insurer, Houston Casualty, will provide $100,000 coverage per seat per occurrence for even the largest commercial balloons. Another insurer, Tudor, apparently will cover smaller one-balloon operations pursuant to GO 120-C if its insurance is placed through an approved surplus line broker. As staff has shown, the $100,000-per-seat requirement is generally applicable to all of the charter party buses and for-hire vehicles that this Commission regulates. The evidence suggests that, if anything, the 30-year-old minimum of $100,000 should be <u>increased</u> to reflect today's higher costs, but we are unwilling in this limited proceeding to consider that for the single category of hot air balloons.

To provide operators with some flexibility, however, our order today continues the relief we fashioned in D.03-07-047, allowing an operator to limit the number of balloons it flies or the number of passengers it carries to fit within a $1 million per-occurrence policy, provided that the $100,000-per-seat minimum

applies at all times to that operator's balloon operations. We take official notice that no balloonist has to date availed itself of these options, but we make the options part of GO 120-C in the event an operator must choose between shutting down (because all of its operation cannot be adequately insured) or limiting its flights within the parameters of insurance available until full insurance can be obtained.

5.3 Should Property Damage/Ground Liability Be Reduced?

Staff acknowledges that most of the Commission's general orders do not require separate exclusive limits for property damage or for injury to persons outside the vehicle, providing instead that such liability is covered in a comprehensive policy. GO 120-C is the only general order that sets a $100,000 minimum for property damage and $300,000 per occurrence for persons on the ground.

Petitioners, on the other hand, have shown that there has been no balloon accident in California for at least 10 years that involved injury to persons on the ground or more than minimal damage to property of those on the ground. Staff introduced two Napa County landowners, who testified that they were concerned about property damage, saying that low-flying balloons that encounter a sudden downdraft represent a threat to vineyards, where replacement of a mature grape vine could cost as much as $2,500. One of the landowners said that low-flying balloons in the past have spooked his small herd of cattle and required the owners to remove them from deep mud after they had run wild.

Based on its review of ballooning accidents in California, staff concludes that it is unlikely that personal injuries to those on the ground or property damage would amount to the respective $300,000 and $100,000 minimums

required by GO 120-C. Accordingly, staff recommends as an alternative that a minimum level of liability be established in a combined single limit of $100,000 per passenger seat and a single limit of not less than $1 million per accident. Under this alternative, any damage to property or persons on the ground would be covered by the same pool of money available to pay claims for injuries to passengers.

Staff's recommendation has merit. Under its proposed alternative, balloons with 10 or fewer passenger seats could be covered in an amount of $100,000 per passenger seat and $1 million per accident limits. The evidence shows that most balloon accidents rarely involve injury to all persons aboard. Unlike engine-driven aircraft, the likelihood of injury to persons on the ground or damage to property is remote. With a $1 million-per-accident minimum requirement, there would be a pool of money available to cover all likely injury and damage claims. Since the $1 million-per-accident minimum mirrors the kind of policy available to balloonists in other states, more insurers may be encouraged to provide that coverage (so long as that limit includes a $100,000-per-passenger-seat minimum) in California. Our order today amends GO 120-C to make this alternative available.

5.4 Should PE-794 Certificate of Insurance Be Discontinued?

Petitioners urge elimination of the requirement that insurers sign a Form PE-794 certificate of insurance certifying that their policy meets the requirements of GO 120-C. Petitioners submitted evidence showing that some insurers are reluctant to sign a Form PE-794 because of its acknowledgement that all flights are covered and that the insurance shall not be subject to exclusions because of violations by the balloon operators. Staff, on the other hand, argues that the Form PE-794 is a separately enforceable obligation by insurers to provide the

required coverage and thus enhances protection of the public. Staff's witness Wuerstle testified:

> I believe [Form PE-794] affords the public added protection by essentially closing any loopholes, if you will, that the insurance company might try to claim in the event of an injury or death or damage to property. Insurance policies often have limitations, exclusions, some in the form of endorsements or warranties, and the PE-794, like other certificates that are filed with the Commission, is designed to overcome any of those sorts of exclusions and supersede them by insuring the coverage is in place and the public is protected.
>
> For example, a balloon policy might have a limitation that provides that coverage is void if the operator has more than two balloons in the air at one time. That's not acceptable under the PE-794, which provides that all flights are covered. (Transcript, at 131.)

Both Petitioners and staff agree that the enforceability of Form PE-794 has never been the subject of challenge by insurers. Moreover, the evidence indicates that insurers prior to 2002 routinely signed the form as evidence of insurance. At time of hearing, Houston Casualty executed Form PE-794s on behalf of three manned balloon operators in California. As a practical matter, execution of this form appears to be more efficient for both insurers and staff than submitting a certified copy or extract of the policy itself (as permitted by GO 120-C(7)(A) and GO 120-C(7)(C)) and meeting requirements that those documents be constantly updated.

Our order today retains the use of the Form PE-794 as the preferred method of certifying that insurance meeting the requirements of GO 120-C is in place.

5.5 Self-Insurance and Surety Provisions

GO 120-C permits aircraft operators to file an application for authority to provide coverage through self-insurance or surety bonds instead of through insurance. Both Petitioners and staff contend that these options have never been used by balloonists and are unlikely to be used in the future because of the relatively small size and lean budgets of most balloon operations. Accordingly, no party recommends that we retain the detailed requirements for bonding or self-insurance that we offered to the industry in our Interim Order. While such options continue to be available by filing an application under GO 120-C, our order today discontinues the procedures for use of those options that were part of D.03-07-047.

6. Conclusion

In summary, our order today amends GO 120-C by adding a new Section 11 applicable only to lighter-than-air manned commercial balloons. Section 11 provides the following insurance options to commercial balloon operators:

- As an alternative to providing a policy with three separate limits required by GO 120-C(1)(A) – *i.e.*, $100,000 per passenger seat per accident; $300,000 per accident for those on the ground, and $100,000 per accident for property damage liability – a manned balloon operator may meet the liability requirement through a combined single limit policy of $100,000 per passenger seat per accident and combined single limit minimum of $1 million applicable to all claims per accident. Under this scenario, an operator could fly no more than 10 passengers in all its balloons at any one time, unless it otherwise provided for $100,000-per-seat coverage for additional seats. The Form PE-794 executed by the insurer would note this limitation. This change in the amount of coverage required is made pursuant to Pub. Util. Code § 5505.

- As an alternative to the requirement of Section 8 of GO 120-C (requiring that evidence of coverage shall apply to any and all commercial flights operated by the insured), a manned balloon operator may file an insurance policy or policies with the Commission that cover only specifically listed balloons. Any operator that elects this option will have its operating authority limited to the balloon or balloons specifically named in the policy or policies on file with the Commission, until it files proof of additional insurance. The Form PE-794 executed by the insurer would note this limitation.
- As an alternative to the requirement of Section 1(A)(1) of GO 120-C (requiring a minimum of $100,000 per all seats on all aircraft flown), a manned balloon operator may limit its operations by filing with the Commission insurance and an affidavit describing limits on the number of passengers the operator will carry in each of its balloons so that the insurance on file with the Commission will continue to provide $100,000 per passenger bodily injury and death liability coverage, along with $400,000 of insurance per accident to cover personal injuries to those not aboard the aircraft and property damage. Any operator that elects this option will have its operating authority limited to the number of passengers set forth in the affidavit and policy or policies on file with the Commission, until the operator files proof of additional insurance. The Form PE-794 executed by the insurer would note this limitation.

The Commission recognizes the important cultural and financial benefits offered by the hot air balloon industry in California. As witnesses pointed out at hearing, many local communities and enterprises proudly feature pictures of hot air balloons in their advertising and logos. The changes that we make today in GO 120-C are intended to make it easier for balloon operators to obtain full insurance for their rides or, where full insurance is unavailable on terms acceptable to the operators, to limit the number of balloons flown or passengers carried until they can acquire more complete insurance.

7. Comments on Proposed Decision

The proposed decision of ALJ Glen Walker in this matter was mailed to the parties in accordance with Section 311(d) of the Public Utilities Code and Rule 77.1 of the Rules of Practice and Procedure. Comments were filed only by the Commission's staff, which supported the proposed decision "and strongly urges the Commission to approve it in its entirety." (Staff Comments, at 4.) Staff's unopposed motion to late file comments is granted.

8. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Glen Walker is the assigned ALJ in this proceeding.

Findings of Fact

1. Approximately 50 companies offer hot air balloon rides throughout California, carrying some 60,000 passengers per year and generating millions of dollars in tourist revenue.

2. In early 2002, liability insurance that met the requirements of GO 120-C became unavailable to California balloon operators because insurers withdrew from this market or limited their proffer of insurance in a manner not acceptable under California law.

3. On May 30, 2003, Petitioners filed an application for temporary relief from the requirements of GO 120-C and a petition seeking permanent changes in GO 120-C.

4. In acting on the application, the Commission in D.03-07-047 provided alternative relief in insurance requirements for hot air balloon operators.

5. The Commission is required under Pub. Util. Code §§ 5500-5512 to establish and enforce minimum insurance requirements for California commercial air operators, including hot air balloon operators.

6. Under GO 120-C, the Commission requires hot air balloon operators to comply with insurance requirements applicable to aircraft with a passenger seating capacity of from 1 to 20 persons.

7. Balloon operators are required to file proof of their insurance in the form of a copy of the policy certified by the insurer, an abstract of the policy, or, more commonly, by a Commission-approved certificate of insurance called the PE-794.

8. GO 120-C requires a minimum of $100,000 liability insurance per passenger seat on all aircraft flown by a balloon operator, and this amount is generally comparable to minimums imposed for other modes of transportation regulated by the Commission.

9. GO 120-C is the only general order that sets a $100,000 minimum for property damage and $300,000 minimum per occurrence for persons on the ground.

10. In September 2003, Houston Casualty began offering hot air balloon insurance that complied with all requirements of GO 120-C.

11. At time of hearing, the Commission had accepted Form PE-794 filings by Houston Casualty on behalf of three hot air balloon operators in California.

Conclusions of Law

1. The petition for modification of GO 120-C should be granted to the extent set forth below.

2. The modification of GO 120-C set forth below should replace the Modified Interim Plan authorized by the Commission in D.03-07-047.

3. These proceedings should be closed.

ORDER

IT IS ORDERED that:

1. Petition (P.) 03-05-040 for amendment of General Order (GO) 120-C is granted to the extent set forth below.

2. The Modified Interim Plan authorized in Application (A.) 03-05-039 by Interim Decision 03-07-047 is terminated and replaced by the amendment to GO 120-C set forth below.

3. GO 120-C is amended by adding the following Section 11:

> "11. This section applies only to lighter-than-air aircraft that is not engine-driven and that sustains flight through the use of either gas buoyancy or an airborne heater (manned balloon).
>
> "(A) As an alternative to providing an insurance policy with three separate limits as set forth in Section 1(A) – *i.e.*, $100,000 per passenger seat per accident; $300,000 per accident for those on the ground, and $100,000 per accident for property damage liability – a manned balloon operator may meet the liability requirement of this general order through a combined single limit policy that provides a minimum of $100,000 per passenger seat per accident and a combined single limit minimum of $1 million applicable to all claims per accident.
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> "(B) As an alternative to the requirement of Section 8 (requiring that evidence of coverage shall apply to any and all commercial flights operated by the insured), a manned balloon operator may file an insurance policy or policies with the Commission that cover only specifically listed aircraft. Any manned balloon operator that elects this option will have its operating authority limited to the balloon or balloons specifically named in the policy or policies on file with the Commission until it files proof of additional insurance.
>
> "(C) As an alternative to the requirement of Section 1(A)(1) (requiring a minimum liability of $100,000 per seat for all aircraft flown), a manned balloon operator may limit its

operations by filing with this Commission an affidavit describing the limits on the number of passengers it will carry in each of its manned balloons so that the insurance it has on file with the Commission will continue to provide $100,000 per passenger aircraft passenger bodily injury and death liability coverage, as well as $300,000 liability coverage for injuries on the ground and $100,000 property damage liability. Any manned balloon operator that elects this option will have its operating authority limited accordingly until it increases its coverage."

4. A.03-05-039 and P.03-05-040 are closed.

Dated April 22, 2004, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

I will file a concurrence.

/s/ SUSAN P. KENNEDY
Commissioner

A.03-05-039
D.04-04-070

Commissioner Susan P. Kennedy, Concurring
April 22, 2004

I file this concurrence because I think this Commission has absolutely no business regulating hot air balloons – any more than we do regulating amusement park rides, or any other mode of "transportation" that actually goes from point A to point A.

I believe that some state agency should ensure that hot air balloon operators maintain an appropriate level of insurance – CalOSHA, for example – but it should not be the CPUC.

First, because hot air balloons are not true transportation; and

Second, because I simply do not trust this Commission to regulate operators in a manner that is consistent, fair and balanced. All we have to do is remember that this Commission was ready to kill this industry last July – ready to put up to 2,000 Californians out of work – rather than alter our regulations to respond to the crisis these operators were facing. We were sending out cease and desist orders, instead of talking with these businesses, instead of attempting to balance their concerns and ensure consumer safety at the same time.

If there was ever an example of irresponsible regulation, that is it.

It wasn't an issue with financial, policy, or political implications of the magnitude that we are accustomed to dealing with here at the Commission. But it was critical nonetheless. And we came dangerously close to completely dropping the ball, to being the only state in the country that shut down the hot air balloon industry within its borders.

For this reason, I support the legislation of Assemblymember Wiggins that removes hot air balloons from our jurisdiction.

/s/ SUSAN P. KENNEDY
Susan P. Kennedy
Commissioner

April 22, 2004, San Francisco, California