

Decision 89 02 079 FEB 24 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
James Patrick Thomas, doing business)	
as J & T Transport, for authority)	Application 89-02-019
to obtain an Agricultural Carrier)	(Filed February 10, 1989)
Permit to operate statewide.)	

O P I N I O N

By this application James Patrick Thomas (Thomas or applicant), an individual doing business as J & T Transport, requests authority to operate as an Agricultural Carrier. In support of his application Thomas supplied the following information.

General Requirements¹

Thomas has resided in the State of California continuously for not less than 90 days preceding the filing of this application.

Applicant is not affiliated with any shippers, receivers, or carriers by reason of common ownership, control, or management.

Applicant proposes to transport fresh fruits and vegetables within the State of California. Accessorial services of loading and unloading and split pick up and delivery will be provided.

¹ These requirements for the issuance of a permit, which have been in effect for some time, are contained in Public Utilities Code (PU Code) §§ 3571, 3572, 3574, 3575, 3631, 3661, 3737, 3738, and 5003.1, and Commission General Orders (GO) Series 84, 100, 102, and 106. In 1988, the Legislature added §§ 460.5, 1063.5, and 3553 (see Appendix A) which set up new requirements carriers must meet before the Commission may issue authorities. These will be discussed in a later section of this decision.

Thomas will not transport hazardous materials and/or hazardous wastes.

Applicant will operate as a prime carrier and will not engage subhaulers; therefore applicant will not be required to post a subhaul bond.

The total volume of freight during the first year of operation is expected to be 10.8 million pounds for a gross income of \$110,000.

A certificate in support of Thomas by C & G Produce Co. is attached to the application.

Because applicant will operate exclusively as an Agricultural Carrier, he is not required to obtain copies of Commission tariffs, decisions, or orders applicable to the class of transportation service requested in the application.

Applicant will operate one piece of equipment which is listed on Commission Form 706D and attached to the application.

Applicant will not handle C.O.D. shipments, lease equipment, nor engage subhaulers; therefore he will not be subject to the GO 84 and 102 series.

The applicant does not have a certificate of insurance on file with the Commission which is required by the Commission's GO-100 series.

Applicant has never held a permit from the Commission.

Thomas's balance sheet shows a ratio of assets to liabilities of 1.26. The ratio of his liquid assets to total required working capital on a 45-day basis is 1.08. And applicant's projected profit and loss statement for 43 weeks of the first year of operation shows an operating ratio before income taxes of 0.51. It is noted that projected expenses do not include any provision for drivers nor owner compensation.

Applicant lists 1st Interstate Bank, Tyler Mall, Riverside, California as familiar with applicant's financial position and authorizes the Commission to obtain any information

necessary from that institution to verify applicant's financial position.

Applicant has deposited the statutory filing fee with the Commission.

Based on the material noted above as contained in the application, we find Thomas meets all requirements for financial responsibility, residency, type of transportation to be performed, expected results of operations, and need for the service. However, the applicant has not filed evidence that he has adequate accident liability protection required by the GO Order 100 series.

Compliance with §§ 460.5 and 3553

As noted in Footnote 1, the Legislature enacted new regulations in 1988 which set up additional requirements carriers must meet before the Commission may grant or transfer authorities. The new PU Code sections are set out in Appendix A.

The new requirements center on three areas: worker's compensation insurance, maintenance and operating condition of equipment, and driver qualifications and training.

§ 460.5 requires that an applicant employing workers shall file with the Commission a certificate of workers' compensation insurance coverage for its employees or a certificate of consent to self-insure issued by the Director of Industrial Relations. Thomas certifies in his application that he will not employ anyone in his business. Therefore, we find he is not subject to § 460.5.

Subsection (a)(1) of § 3553 requires an applicant to be financially and organizationally capable of conducting an operation that complies with the rules and regulations of the Department of the California Highway Patrol governing highway safety. Thomas, from the statements in his application concerning financial ability to conduct the proposed operation, appears well able to comply with this subsection.

Subsection (2) requires applicant to be committed to observing the hours of service regulations of state and, where applicable, federal law, for all persons, whether employees or subhaulers, operating vehicles in transportation for compensation under the certificate. And Subsection (6) requires applicant to maintain his vehicles used in transportation for compensation in a safe operating condition and in compliance with the Vehicle Code and with regulations contained in Title 13 of the California Code of Regulations relative to motor vehicle safety. With respect to paragraphs (2) and (6) of Subsection (a), Subsection (b) provides that the Commission may base a finding of compliance on a certification that an applicant has filed with the Commission a sworn declaration of ability to comply and intent to comply. Thomas has provided that declaration in his application.

Subsection (3) requires that applicant must have a preventive maintenance program in effect for its vehicles used in transportation for compensation that conforms to regulations of the Department of the California Highway Patrol in Title 13 of the California Code of Regulations. Thomas does not include in his application any information on a preventive maintenance program such as a preventive maintenance work sheet, a sample power unit inspection record, and a schedule of servicing. We find that the applicant fails to meet the requirements of Subsection (3).

Subsection (4) concerning the regular checking of driver records does not apply to applicant because Thomas is the sole driver for the operation.

Subsection (5) requires that applicant have a safety education and training program in effect for all persons, whether employees or subhaulers, operating vehicles used in transportation for compensation. The applicant states only that he is an owner/operator and will comply with all the safety regulations of the Highway Patrol. We believe applicant's showing for this requirement is unsatisfactory. It is our opinion that applicants

should demonstrate that they meet some or all of such criteria as completion of a safe driving course, possession of a certificate showing completion of a truck-driver training course, supervised road tests, and enrollment in safety programs all of which are all in compliance with Section 391.35 of the Federal Motor Carrier Safety Regulations.²

We find that applicant has failed to demonstrate that he has an education and training program in effect and, therefore, fails to comply with Subsection (5).

Applicant is not subject to Subsection (7) as noted under the discussion of § 460.5 above.

As required under Subsection (8) applicant has provided the actual location where documents supporting the factual matters specified in the showing required by this section may be inspected by the Commission and the Department of the California Highway Patrol.

Based on the material noted above as contained in the application we find Thomas is not subject to § 460.5 but he fails to comply with § 3553 Subsections (a)(3) and (a)(5).

Findings of Fact

1. Applicant meets all requirements for financial responsibility, residency, type of transportation to be performed, expected results of operations, need for the service.

2 We recognize that the language of the new legislation can be interpreted broadly which makes it difficult to establish overall standards of proof for the various types of carriers applying for permits. With that in mind the Commission's Transportation Division is planning to hold workshops on entry requirements under the new provisions. These workshops will be held in Los Angeles on March 6th and 7th and in San Francisco on March 9th and 10th, 1989 to provide interested parties an opportunity to offer proposed standards. In the meantime, we will grant or deny applications on an ad hoc basis.

2. Applicant does not meet the accident liability protection required by the Commission's GO 100 series.

3. Applicant is not subject to § 460.5.

4. Applicant does not comply with § 3553 Subsections (a)(3) and (a)(5).

Conclusion of Law

The application should be denied without prejudice and should be effective on the date signed to give applicant an immediate opportunity to file a revised application.

ORDER

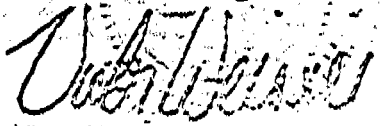
IT IS ORDERED that Application 89-02-019 is denied without prejudice to applicant filing a new application within 60 days from the effective date of this order in which case the statutory filing fee will be waived.

This order is effective today.

Dated FEB 24 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Victor Weissor, Executive Director

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1988 STATUTES ADDED TO THE PUBLIC UTILITIES CODE
WHICH AFFECT THE ISSUANCE OF
HIGHWAY COMMON CARRIER
AND HIGHWAY CARRIER AUTHORITIES

460.5. On or before July 1, 1989, every highway common carrier employing workers shall file with the commission a certificate of workers' compensation insurance coverage for its employees or a certificate of consent to self-insure issued by the Director of Industrial Relations. (Added Stats. 1988, ch. 1175.)

1063.5. (a) The commission shall issue or authorize the transfer of no certificate under this article except upon a showing before the commission and a finding by the commission that the applicant or proposed transferee meets all of the following requirements:

(1) Is financially and organizationally capable of conducting an operation that complies with the rules and regulations of the Department of the California Highway Patrol governing highway safety.

(2) Is committed to observing the hours of service regulations of state and, where applicable, federal law, for all persons, whether employees or subhaulers, operating vehicles in transportation for compensation under the certificate.

(3) Has a preventive maintenance program in effect for its vehicles used in transportation for compensation that conforms to regulations of the Department of the California Highway Patrol in Title 13 of the California Code of Regulations.

(4) Participates in a program to regularly check the driving records of all persons, whether employees or subhaulers, operating vehicles used in transportation for compensation requiring a class 1 driver's license under the certificate.

(5) Has a safety education and training program in effect for all persons, whether employees or subhaulers, operating vehicles used in transportation for compensation.

(6) Will maintain its vehicles used in transportation for compensation in a safe operating condition and in compliance with the Vehicle Code and with regulations contained in Title 13 of the California Code of Regulations relative to motor vehicle safety.

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(7) Has filed with the commission a certificate of workers' compensation insurance coverage for its employees or a certificate of consent to self-insure issued by the Director of Industrial Relations.

(8) Has provided the commission an address of an office or terminal where documents supporting the factual matters specified in the showing required by this section may be inspected by the commission and the Department of the California Highway Patrol.

(b) With respect to paragraphs (2) and (6) of subdivision (a), the commission may base a finding on a certification by the commission that an applicant has filed, with the commission, a sworn declaration of ability to comply and intent to comply.

(c) The commission shall, commencing on April 15, 1989, and quarterly thereafter, prepare and submit to the Legislature a report of its implementation of this section. This report may be combined with the report required by Section 3553. (Added Stats. 1988, ch. 1175.)

3553. (a) The commission shall issue or authorize the transfer of no permit under this chapter except upon a showing before the commission and a finding by the commission that the applicant or proposed transferee meets all of the following requirements:

(1) Is financially and organizationally capable of conducting an operation that complies with the rules and regulations of the Department of the California Highway Patrol governing highway safety.

(2) Is committed to observing the hours of service regulations of state and, where applicable, federal law, for all persons, whether employees or subhaulers, operating vehicles in transportation for compensation under the permit.

(3) Has a preventive maintenance program in effect for its vehicles used in transportation for compensation that conforms to regulations of the Department of the California Highway Patrol in Title 13 of the California Code of Regulations.

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(4) Participates in a program to regularly check the driving records of all persons, whether employees or subhaulers, operating vehicles used in transportation for compensation requiring a class 1 driver's license under the permit.

(5) Has a safety education and training program in effect for all persons, whether employees or subhaulers, operating vehicles used in transportation for compensation.

(6) Will maintain its vehicles used in transportation for compensation in a safe operating condition and in compliance with the Vehicle Code and with regulations contained in Title 13 of the California Code of Regulations relative to motor vehicle safety.

(7) Has filed with the commission a certificate of workers' compensation insurance coverage for its employees or a certificate of consent to self-insure issued by the Director of Industrial Relations.

(8) Has provided the commission an address of an office or terminal where documents supporting the factual matters specified in the showing required by this section may be inspected by the commission and the Department of the California Highway Patrol.

(b) With respect to paragraphs (2) and (6) of subdivision (a), the commission may base a finding on a certification by the commission that an applicant has filed, with the commission, a sworn declaration of ability to comply and intent to comply.

(c) The commission shall, commencing on April 15, 1989, and quarterly thereafter, prepare and submit to the Legislature a report of its implementation of this section. This report may be combined with the report required by Section 1063.5. (Added Stats. 1988, ch. 1175.)

(END OF APPENDIX A)

should demonstrate that they meet some or all of such criteria as completion of a safe driving course, possession of a certificate showing completion of a truck-driver training course, supervised road tests, and enrollment in safety programs all of which are all in compliance with Section 391.35 of the Federal Motor Carrier Safety Regulations.²

We find that applicant has failed to demonstrate that he has an education and training program in effect and, therefore, fails to comply with Subsection (5).

Applicant is not subject to Subsection (7) as noted under the discussion of § 460.5 above.

As required under Subsection (8) applicant has provided the actual location where documents supporting the factual matters specified in the showing required by this section may be inspected by the Commission and the Department of the California Highway Patrol.

Based on the material noted above as contained in the application we find Thomas is not subject to § 460.5 but he fails to comply with § 3553 Subsections (a)(3) and (a)(5).

Findings of Fact

1. Applicant meets all requirements for financial responsibility, residency, type of transportation to be performed, expected results of operations, need for the service.

2 We recognize that the language of the new legislation can be interpreted broadly which makes it difficult to establish overall standards of proof for the various types of carriers applying for permits. With that in mind the Commission's Transportation Division is planning to hold workshops on entry requirements under the new provisions. These workshops will be held in Los Angeles on March 6th and 7th and in San Francisco on March 9th and 10th, 1989 to provide interested parties an opportunity to offer proposed standards. In the meantime, we will grant or deny applications on an ad hoc basis. Those denied will be without prejudice to applicants making supplemental showings to justify their requests.