

Decision 89 03 015 MAR 8 1989**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
Carl E. Pierce, an individual, for)	Application 89-02-032
a permit to operate as a Highway)	(Filed February 21, 1989)
Contract Carrier.)	

OPINION

By this application Carl E. Pierce (Pierce or applicant) requests authority to operate as a highway contract carrier. In support of his application Pierce supplied the following information.

General Requirements¹

Pierce 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 general freight, specifically liquid chemicals and foodstuffs, between all points within California. No accessorial services 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) Sections 3571, 3572, 3574, 3575, 3631, 3661, 3737, 3738, and 5003.1, and various Commission General Orders. In 1988, the Legislature added Sections 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.

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

Applicant will operate only as a subhauler and will not engage other 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 produce revenues for applicant of \$30,000.

A certificate in support of Pierce by Bulk Transportation (Bulk) is attached to the application. Bulk holds common and contract carrier authority from the Commission (T. No. 71340) and has a valid subhaul bond on file.

Because applicant will operate exclusively as a subhauler, 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.

Pierce has on file with the Commission evidence of insurance which complies with the Commission's GO-100 series.

Applicant has never held a permit from the Commission.

Applicant's balance sheet indicates cash on hand in the amount of \$4,000, total assets of \$6,500, and no liabilities. His projected expenses for 45 days total \$4,448. Applicant's projected profit and loss statement for the first year of operation shows an operating ratio before income taxes of 0.23. It is noted that projected expenses do not include any provision for drivers and helpers wages nor owner compensation.

Applicant lists three financial institutions as being familiar with his financial position and authorizes the Commission to obtain any information necessary from them to verify his financial condition.

Applicant has deposited the statutory filing fee with the Commission.

Based on the material noted above as contained in the application, we find Pierce meets all requirements for financial responsibility, residency, accident liability protection, type of transportation to be performed, expected results of operations, and need for the service.

Compliance with Sections 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.

Section 3553(a)(7) 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. Pierce certifies in his application that he will not employ anyone in his business. Therefore, we find he is not subject to Section 3553(a)(7).

Subsection (1) of Section 3553(a) 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. Pierce, 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 Subsections (2) and (6) of Section 3553(a), Section 3553(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. Pierce 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. Pierce includes in his application three pages of forms used in his preventive maintenance program including a preventive maintenance work sheet, a sample daily power unit inspection report, and the schedule for servicing. We find this meets the requirements of Subsection (3).

Subsection (4) concerning the regular checking of driver records does not apply to applicant because Pierce 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. Pierce asserts he has over 20 years accident free experience driving commercial vehicles. He regularly reads and reviews the "California Commercial Driver Handbook," (Handbook) a publication of the California Department of Motor Vehicles. A

copy of this publication is included with the application. It covers subjects pertaining to testing, vehicle inspection, control of vehicles, size and weight restrictions, brake systems, and operating combination vehicles. We find that applicant's experience and regular review of the Handbook constitute compliance with Subsection (5).

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 Pierce complies with Section 3553.

Findings of Fact

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

2. Applicant complies with Section 3553.

Conclusions of Law

1. Applicant should be granted a permit as a highway contract carrier.

2. Because applicant is ready and willing to serve and the service is needed, this order should be effective on the date signed.

ORDER

IT IS ORDERED that Carl E. Pierce (Pierce) is granted a highway contract carrier permit subject to the following conditions:

- a. No vehicle or vehicles shall be operated by Pierce unless adequately covered by a public liability and property damage insurance policy or corporate surety bond as required by Sections 3631 and 3632 of the PU Code.
- b. No motor vehicle shall be operated by Pierce unless there is displayed thereon an identification symbol in accordance with the directions and requirements of this Commission.
- c. Pierce shall comply with all orders, decisions, rules, regulations, directions, and requirements governing the operations of Pierce, issued, published, prescribed or adopted by this Commission pursuant to the PU Code.
- d. Pierce shall at all times while operating under this permit, or any amendment or supplement thereto, observe and comply with all decisions, orders, rules, and regulations issued, prescribed or adopted by this Commission relating to or affecting rates and charges to be assessed or collected by Pierce for transportation and accessorial services.
- e. This permit shall be subject to amendment or modification from time to time by this Commission as conditions may warrant or require and shall also be subject to suspension or revocation as provided in the PU Code.
- f. This permit shall not be sold, assigned, leased, or otherwise transferred or encumbered without first obtaining Commission authorization.

- g. This permit shall lapse and terminate if not exercised for a period of one year.
- h. This permit does not allow subhaul operations for the following types of carriers:
 - (1) Cement
 - (2) Cement Contract
 - (3) Dump Truck
 - (4) Seasonal Agricultural
 - (5) Seasonal Livestock

This order is effective today.

Dated MAR 8 1989 , at San Francisco, California.

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

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

John B. Oganian
John B. Oganian, 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)

Applicant lists three financial institutions as being familiar with his financial position and authorizes the Commission to obtain any information necessary from them to verify his financial condition.

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