

Decision 89 03 016 MAR 8 1989**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
FE Industries, Inc. (Transferor) to)	
transfer and Great Western)	
Transportation, Inc. (Transferee))	Application 89-02-033
to acquire, a certificate of public)	(Filed February 21, 1989)
convenience and necessity issued)	
under Public Utilities Code Section)	
1063.)	

OPINION

By this application FE Industries, Inc. (FE, or transferor) seeks authority to transfer and Great Western Transportation, Inc. (transferee) to acquire a certificate of public convenience and necessity to operate as a highway common carrier under Public Utilities (PU) Code § 1063.

General Requirements¹

Transferee, a corporation, is authorized to transact business within the State of California.

Transferee proposes to transport general commodities between all points within the State of California.

¹ These requirements for the issuance of a certificate, which have been in effect for some time, are contained in PU Code § 1063 and in various Commission General Orders (GO). 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.

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

Transferee will engage 10 subhaulers, and has furnished evidence of the surety bond required by General Order 102 series.

Transferee will publish its own tariffs.

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

Transferee will not handle C.O.D. shipments; therefore it will not be subject to the GO 84 series.

Transferee has a certificate of insurance on file with the Commission which is required by the Commission's GO-100 series.

Transferor is retiring from business, and desires to sell all of its common carrier authority. Transferee's principal shareholder states he has been in the trucking field for several years, and believes that with his experience and business contacts he can provide a positive contribution to the transportation industry.

Transferee's balance sheet shows cash on hand of \$25,000, total assets of \$51,800 and a net worth of \$51,800.

Transferee has deposited the statutory filing fee with the Commission.

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

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 a common carrier 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. Transferee certifies in its application that it will not employ anyone in its business. Therefore, we find it is not subject to § 460.5.

Subsection (1) of § 1063.5(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. Transferee, from the statements in its 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 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. Transferee has provided that declaration in its application.

Subsection (3) requires that applicants 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. Transferee has included in its application a maintenance schedule form, indicating the items to be checked every 10,000 miles. These include such categories as oil change, lubrication, checking all belts and hoses, air pressure, brakes, safety brakes, lights and flashers, warning devices, tires, wheels, electrical systems and tie down equipment, i.e. chains, binders, etc. We find this meets the requirements of Subsection (3).

Concerning Subsection (4) transferee states that every subhauler's driving record is checked with the Department of Motor Vehicles (DMV) every 90 days to insure that the driver is operating in accordance with DMV-Department of Transportation regulations.

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. Transferee conducts a safety and education program the third Saturday of each month. The program covers a review of highway safety requirements and procedures, such as log maintenance, vehicle safety, and observance of driver courtesy and rules of the road. Transferee is a new company, and intends to obtain safety films for viewing by drivers from its insurance

carrier and the California Highway Patrol.² We find that transferee complies with Subsection 5.

Transferee is not subject to Subsection (7) as noted.

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 transferee is not subject to § 460.5 and complies with § 1063.5.

Findings of Fact

1. Transferee meets all requirements for financial responsibility, residency, type of transportation to be performed, expected results of operations, and need for the service.
2. Transferee is not subject to § 460.5.
3. Transferee complies with § 1063.5.

Conclusions of Law

1. The application should be granted. A public hearing is not necessary.

2. The effective date of this decision should be today.

Only the amounts paid to the State for operative rights may be used in rate fixing. The State may grant any number of

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 were to 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.

rights and may cancel or modify the monopoly feature of these rights at any time.

ORDER

IT IS ORDERED that:

1. FE Industries, Inc. may sell and transfer the operative rights specified in A.89-02-033 to Great Western Transportation, Inc. (transferee). This authority shall expire if not exercised by April 30, 1989.

2. Transferee shall:

- a. File with the Transportation Division written acceptance of the certificate and a copy of the bill of sale or other transfer document within 30 days after transfer.
- b. Amend or reissue seller's tariffs. The tariffs shall not be effective before the date of transfer, nor before 5 days' notice is given to the Commission.
- c. Comply with General Orders Series 100, 117, and 123, and the California Highway Patrol safety rules.
- d. Maintain accounting records in conformity with the Uniform System of Accounts.
- e. File an annual report by April 30 of each year.
- f. Comply with General Order Series 84 (collect-on-delivery shipments). If purchasers elect not to transport collect-on-delivery shipments, they shall file the tariff provisions required by that General Order.

3. When the transfer is completed, and on the effective date of the tariffs, a certificate of public convenience and necessity is granted to Great Western Transportation, Inc. authorizing it to

operate as a highway common carrier, as defined in PU Code § 213, between the points set forth in Appendix B.

4. The certificate of public convenience and necessity held by FE Industries, Inc., and granted by Resolution 18055 is revoked on the effective date of the tariffs.

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. OHEANIAN
Commissioners

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



Victor Weisser, 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 transferee 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 transferee 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 transferee 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.

(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.

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(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 a transferee 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)

Appendix B Great Western Transportation, Inc. Original Page 1
(T-162,178)

Great Western Transportation, Inc. (Great Western), by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to conduct operations as a highway common carrier as defined in Section 213 of the Public Utilities Code, between all points and places in the State of California.

Great Western shall not transport any shipments of the following commodities:

Used household goods and personal effects, office, store, and institution furniture and fixtures.

Ordinary livestock.

Liquids, compressed gases, commodities in semiplastic form, and commodities in suspension in liquids in bulk in any tank truck or tank trailer.

Mined, building, paving or construction materials, except cement or liquids, in bulk in dump truck equipment.

Portland or similar cements, either alone or in combination with lime or powdered limestone, in bulk or in packages, when loaded substantially to capacity.

Issued by California Public Utilities Commission.
Decision 89 03 016, Application 89-02-033.

Fresh fruits, nuts, vegetables, logs, and unprocessed agricultural commodities.

Any commodity, the transportation or handling of which, because of width, length, height, weight, shape, or size, requires special authority from a governmental agency regulating the use of highways, roads, or streets.

Liquid or semisolid waste, or any other bulk liquid commodity in any vacuum-type tank truck or trailer.

Petroleum or petroleum products in tank trucks or tank trailers.

Automobiles, trucks, and buses, new and used.

Commodities when transported in motor vehicles equipped for mechanical mixing in transit.

Articles of extraordinary value.

Trailer coaches and campers, including integral parts and contents when contents are within the trailer coach or camper.

Appendix B Great Western Transportation, Inc.
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Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigeration equipment.

Hazardous material as defined by Section 353 of California Vehicle Code and subject to Section(3) of General Order Series 100 and requiring the higher insurance limits required by that General Order.

Issued by California Public Utilities Commission.
Decision 89 03 016, Application 89-02-033.

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 a common carrier 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. Transferee certifies in its application that it will not employ anyone in its business. Therefore, we find it is not subject to § 460.5.

Subsection (a)(1) of § 1063.5 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. Transferee, from the statements in its 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 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. Transferee has provided that declaration in its application.

Subsection (3) requires that applicants must have a preventive maintenance program in effect for its vehicles used in