

Decision 89 03 017 MAR 8 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Harold Wiegand Ent. doing business)
as Solano Farms to transfer his)
agricultural carrier permit, tank)
truck carrier permit, heavy-)
specialized carrier permit and)
highway contract carrier permit to)
Wiegand Button Motor Express, Inc.)

Application 89-02-034
(Filed February 21, 1989)

OPINION

By this application Harold Wiegand Ent. (Ent.), doing business as Solano Farms, seeks to transfer, and Wiegand Button Motor Express, Inc., (transferee) to acquire the agricultural carrier, tank truck carrier, heavy-specialized carrier and highway contract carrier permits presently held by Ent. In support of the application transferee supplied the following information.

General Requirements¹

Robert Button, Secretary/Treasurer of transferee, is half-owner of Button Transportation.

Transferee (T-161,593) proposes to transport general commodities throughout the State of California. It will transport commodities other than petroleum or petroleum products in its tank truck equipment.

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

Transferee will not handle C.O.D. shipments, will not lease equipment from employees, and will not engage subhaulers; therefore it is not subject to the bonding requirements of General Orders (GO) 84 and 102 series.

Transferee has evidence of insurance on file with the Commission, in compliance with GO-100 series.

Transferee will not transport hazardous materials or hazardous wastes.

Transferee has included with its application a letter of support from Rice Growers Association, stating that it expects to have about 1,080,000 pounds of freight transported by transferee during the first year of operation.

Transferee's projected profit and loss statement for one year indicates revenues of \$1,320,000 and expenses of \$1,008,631.

Transferee's balance sheet indicates total assets of over \$3.2 million, and liabilities of approximately \$2.2 million.

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

Transferee has listed the Bank of California in Sacramento as a financial institution familiar with its financial condition.

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 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 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. Transferee has furnished evidence of workers' compensation insurance coverage.

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. 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 an 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 an applicant to 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. 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 an 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. Transferee includes in its application several pages of forms used in its 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) requires the regular checking of records of drivers requiring Class 1 licenses. Transferee has furnished forms used annually for reviewing the qualifications of drivers. The forms cover medical examinations, violations, certification of Department of Transportation (DOT) examinations, etc.

Subsection (5) requires that an applicant have a safety education and training program in effect for all persons, whether employees or subhaulers, operating vehicles used in transportation for compensation. All of transferee's drivers are to be given a road test every six months to insure maintenance of current expertise. Transferee has furnished copies of the Federal Motor Carrier Safety Regulations Pocketbook, as prescribed by the U.S. DOT, the California Trucking Association Hazardous Materials check list, the Button Trans., Inc. Handbook, and the Truck Driver Training Manual. All are reviewed with each driver annually. We find applicant complies with Subsection (5).

As required under Subsection (8) transferee 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 complies with Section 3553.

Findings of Fact

1. Transferee 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. Transferee complies with Section 3553.

Conclusions of Law

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

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

O R D E R

IT IS ORDERED that:

1. Wiegand Button Motor Express, Inc. (carrier), is granted highway contract carrier, agricultural carrier, tank truck carrier, and heavy-specialized carrier permits, subject to the following conditions:

- a. No vehicle or vehicles shall be operated by carrier 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 carrier unless there is displayed thereon an identification symbol in accordance with the directions and requirements of this Commission.
- c. Carrier shall comply with all orders, decisions, rules, regulations, directions, and requirements governing operations, issued, published, prescribed or adopted by this Commission pursuant to the PU Code.

- d. Carrier shall at all times while operating under these permits, or any amendments 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 for transportation and accessorial services.
- e. These permits 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. These permits shall not be sold, assigned, leased, or otherwise transferred or encumbered without first obtaining Commission authorization.
- g. These permits shall lapse and terminate if not exercised for a period of one year.
- h. These permits do not allow subhaul operations for the following types of carriers:
 - (1) Cement
 - (2) Cement Contract
 - (3) Dump Truck
 - (4) Seasonal Agricultural
 - (5) Seasonal Livestock

2. The highway carrier permits held by Harold Wiegand Ent.
are revoked.

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. OHANIAN
Commissioners

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

John Wiegand

John Wiegand, Executive Director

APPENDIX A
Page 1

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.

APPENDIX A
Page 2

(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.

APPENDIX A
Page 3

(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)

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

Section 3553 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. Transferee has furnished evidence of workers' compensation insurance coverage.

Subsection (a)(1) of Section 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. 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 an 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 an applicant to 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. 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.