

Decision 89 12 039 DEC 1 '8 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
Southwest Type C Distributors, Inc.)	Application 89-03-039
to obtain a Cement Contract Carrier)	(Filed March 24, 1989;
Permit to operate in San Bernardino)	amended July 7, 1989)
County.)	

OPINION

Southwest Type C Distributors, Inc. (Southwest), a California corporation, seeks a Cement Contract Carrier Permit for operations within and to San Bernardino County. A timely protest to the application was filed on April 28, 1989 by Cement Carriers, Inc.; Fiske Bros., Inc.; Diamondback Express, Inc.; Harris Transportation Company; Action Cement Transport, Inc.; Standon Trucking Co., Inc.; Valencia Trucking Corp.; and WMB Transportation (protestants). The protest alleges that each of the protestants hold either Cement Carrier certificates or Cement Contract Carrier permits authorizing transportation to and within San Bernardino County.

On July 7, 1989 Southwest filed its amendment to the application wherein it requested the permit be limited to service solely within the County of San Bernardino and solely for the accounts of Fourth Street Rock Crusher and Empire Ready Mix. By letter, dated July 31, 1989, Counsel for Protestants advised that as a result of the filing of the amendment the protestants have agreed to withdraw the protest.

Southwest's president H. Norman Johnson Jr. owns 100% of the stock of Southwest. The amendment to the application states that "...it is Applicant's desire to expressly limit the provision of service under the permit sought by the application to that

solely within the County of San Bernardino and solely for the accounts of H. Norman Johnson's said commonly owned entities, to wit, Fourth Street Rock Crusher and Empire Ready Mix."

Southwest's Balance Sheet as of November 21, 1988 discloses Assets of \$55,425 offset by liabilities of \$12,500, a resultant net worth of \$42,925. Its projected Profit and Loss Statement for a one-year period projects income of \$142,000, expenses of \$83,033 and a net profit before income taxes of \$58,967.

The application states that Southwest 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. The application also states that Southwest will not transport hazardous materials or hazardous wastes.

In 1988, the Legislature added §§ 460.5, 1063.5, and 3553 to the (PU) Code. These sections established new requirements which applicants must meet before the Commission may issue new authorities or allow transfers of existing authorities. Section 3553 is the section applicable to cement contract carrier authorities.

Section 3553(a) contains eight subsections covering requirements which must be met as follows:

"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.

"(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."

On June 30, 1989, we received a certification from Southwest concerning the requirements of PU Code Section 3553. The certification is received in evidence as Exhibit 1.

The information set forth in the application, the amendment thereto, and Exhibit 1 discloses that Southwest meets the requirements of Section 3553 as follows:

1. The financial data contained in the application discloses that Southwest has demonstrated it meets this requirement.
2. and 6. Section 3553(b) provides that the commission may base a finding with respect to these requirements on a certification by the Commission that applicant has filed a sworn declaration of ability to comply and intent to comply. The sworn declaration of Southwest's Secretary Treasurer is included as part of Exhibit 1.
- 3., 4., and, 5. Exhibit 1 discloses that Southwest meets these requirements.
7. To date, Southwest has not filed its certificate of workers' compensation insurance coverage.
8. Southwest's address is located at:

325 N. Pennsylvania Avenue
San Bernardino, CA 92411

Notice of the filing of the application and the amendment thereto appeared on the Commission's Daily Transportation Calendars of March 30 and July 17, 1989, respectively. No protests, other than the one mentioned above which was withdrawn, have been received.

The Transportation Division has advised that:

"The Analyst Unit staff has reviewed the application and believes it is one which, in the absence of protest, may be granted by ex parte order, providing that the applicant has complied fully with General Order 100-L, the Vehicle Code and with regulations contained in Title 13 of the California Code of Regulations relative to motor vehicle safety."

Findings of Fact

1. Southwest meets all requirements for financial responsibility, residency, type of transportation to be performed, expected results of operations, and need for service.
2. Southwest complies with Section 3553 with the exception of 3553(a)(7).

Conclusions of Law

1. The application should be granted after Southwest files its certificate of workers' compensation insurance coverage.
2. A public hearing is not necessary.

ORDER

IT IS ORDERED that the Executive Director shall issue a cement contract carrier permit to Southwest Type C Distributors, Inc. authorizing operations from any and all points of origin within the State to and within points in the County of San Bernardino, solely for the accounts of Fourth Street Rock Crusher and Empire Ready Mix upon compliance with PU Code Section 3553(a)(7).

This order is effective today.

Dated DEC 18 1989, at San Francisco, California.

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

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

Wesley Franklin