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**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation and )  
Order To Show Cause into whether the )  
operating authority of David Martinez )  
Espinoza, an individual, doing )  
business as David Espinoza Trucking, )  
should be revoked. )

**F I L E D**  
**PUBLIC UTILITIES COMMISSION**  
**APRIL 10, 1996**  
**SAN FRANCISCO OFFICE**  
**I.96-04-023**

**ORDER INSTITUTING INVESTIGATION REQUIRING**  
**DAVID MARTINEZ ESPINOZA TO SHOW CAUSE**  
**WHY HIS OPERATING AUTHORITY SHOULD NOT BE REVOKED**

The California Public Utilities Commission (Commission), pursuant to the California Constitution, Article XII and Division 2, Sections 3501 et seq. of the Public Utilities (PU) Code, regulates the operations and practices of highway carriers within California. The statutes and regulations require these carriers, among other things, to maintain adequate proof of public liability and workers' compensation insurance on file with the Commission, and specifically prohibit carriers from operating without first complying with the accident liability protection requirements of PU Code Section 3631. These regulations further require that carriers operate and maintain their vehicles in safe operating condition and obey the provisions of the California Vehicle Code and participate in the Department of Motor Vehicles (DMV) Pull Notice Program and the California Highway Patrol Biennial Inspection of Terminals (BIT) Program, thereby ensuring that only qualified, Commission-licensed, properly insured carriers with properly licensed employees and safe, properly inspected equipment and terminals, are authorized to operate for-hire vehicles. The regulations in these statutes impose specific

requirements upon motor carriers which are designed to promote safe and legal operations.

David Martinez Espinoza, doing business as David Espinoza Trucking (Respondent), whose mailing address is 1890 West Louise Avenue, Manteca, California 95336, operates over the public highways of this state pursuant to an agricultural carrier permit issued July 21, 1993 under T-174,128.

The Safety and Enforcement Division staff (staff) advises us, through the declaration supporting the issuance of this investigatory proceeding and order to show cause, that it initiated an investigation into the business practices of David Martinez Espinoza, doing business as David Espinoza Trucking, and has obtained evidence that Espinoza conducted for-hire carrier operations during periods when his operating authority was suspended for failure to maintain evidence of liability insurance on file with the Commission. The staff has also obtained evidence that Espinoza performed transportation operations without any public liability insurance in effect; that Espinoza has operated continuously since first obtaining his permit without enrolling his drivers in the DMV Pull Notice Program and without enrolling in the CHP Biennial Inspection of Terminals Program and submitting his truck terminal, operation and equipment to the California Highway patrol for inspection; that Espinoza has failed to comply with the Commission's workers' compensation insurance filing requirements; and that David Martinez Espinoza drove one of his vehicles in for-hire transportation after his driver's license was revoked.

#### THE INVESTIGATION

##### Operating During Suspension

Under Section 3775 of the Public Utilities Code it is unlawful for a highway permit carrier to conduct operations after the cancellation of a permit or during the period of its

suspension. The Safety and Enforcement Division's investigation disclosed that David Martinez Espinoza apparently conducted daily transportation operations during a period in which his permit was ordered suspended by the Commission for failure to maintain evidence of liability insurance on file with the Commission.

Failure To Comply With Liability Insurance Requirements

Public Utilities Code Sections 3555, 3632 and 3634 and Commission General Order 100-M make it unlawful for any highway carrier to operate without the accident liability protection requirements of P.U. Code Section 3631. The Safety and Enforcement Division's investigation shows that David Martinez Espinoza performed transportation operations during a period in which he had no public liability insurance protection.

Failure To Comply With DMV Pull Notice Program

Public Utilities Code Section 3553 requires carriers to enroll in the Pull Notice Program of the Department of Motor Vehicles, as provided in Section 1808.1 of the California Vehicle Code. The Safety and Enforcement Division's investigation disclosed that, since beginning operation in July 1992, David Espinoza failed to properly enroll drivers, including himself as driver, in the DMV Pull Notice Program. Staff's investigation further disclosed that David Espinoza drove at least one of the vehicles of David Espinoza Trucking in for-hire operations after his driver's license was revoked by the Department of Motor Vehicles in October 1994 for his refusal to submit to a chemical test in violation of probation.

Failure To Maintain Safe Operating Equipment

Public Utilities Code Sections 3552 and 3553 require carriers to maintain vehicles in safe operating condition.

Specifically, all vehicles must comply with the Carrier Safety Sections of Title 13 of the California Code of Regulations and the California Vehicle Code. The Safety and Enforcement Division's investigation disclosed that David Espinoza Trucking is not and has never been enrolled in the Biennial Inspection of Terminals (BIT) Program of the California Highway Patrol, in violation of Vehicle Code Section 34501.12.

Failure To Comply with Workers' Compensation Requirement

Public Utilities Code Section 3554 requires each carrier engaging employees to file with the Commission evidence of workers' compensation coverage for its employees. The Safety and Enforcement Division's investigation disclosed that David Espinoza engaged employees, and failed to file with required the Commission a certificate of workers' compensation insurance.

DISCUSSION

The requirements set forth in the Public Utilities Code for the operation of a highway carrier business, as well as the rules which we have promulgated to implement those requirements, go to the heart of assuring public safety. Pursuant to Public Utilities Code Section 3553, the California Legislature has prescribed the conditions under which the Commission shall authorize carriers to operate for hire. The Commission authorizes for-hire operations only after ensuring that each carrier meets the safety, public liability and workers' compensation requirements contained in the Public Utilities Code and the Commission is authorized, pursuant to PU Code Section 3774 at any time for good cause to suspend the operating permit of any highway carrier (the consistent failure to maintain vehicles in a safe operating condition and in compliance with the Vehicle Code constitutes good cause).

The Department of Motor Vehicles' Pull Notice Program tracks and monitors the driver's license status of an employee/driver and reports to the employer if the employee's driving privilege has been suspended, revoked, or otherwise restricted by the DMV. Under this program, an employer who continues the use of an employee whose driver's license has been suspended is guilty of a misdemeanor and subject to fines and/or imprisonment. The employer who operates as a driver is required to be enrolled in the DMV Pull Notice Program as though he or she were an employee. The employer who continues to employ as a driver any person against whom a disqualifying action has been taken regarding his or her driving privilege, is guilty of a misdemeanor and subject to fines and/or imprisonment.

Pursuant to PU Code Section 3774.5 the California Highway Patrol through its regular terminal and vehicle equipment safety inspection program routinely notifies us and requests suspension of carriers who operate unsafely.

Where a carrier fails to enroll in the CHP's BIT program, thereby failing to submit to a CHP inspection, and fails to enroll its drivers in the Pull Notice Program, there is virtually no assurance of the carrier's compliance with the safety provisions of the Vehicle Code and compliance with the Pull Notice Program. And this is a level of risk to the public which we cannot tolerate, and so we order immediate suspension of the respondent's permit until such time as he is in full compliance with these basic requirements.

Since safety is the focus of our regulatory program, we find it disturbing to learn that this carrier has apparently failed to observe any of the safety requirements imposed by the Public Utilities Code. We are particularly concerned that the carrier operated one of his own vehicles when his driver's license was revoked, and of his operations without liability insurance. If this apparent pattern of violations continues the public will be exposed to an unacceptable level of risk. In view of this carrier's pattern of non-compliance, we find it

reasonable to presume that his equipment may be unsafe, his maintenance program inadequate and his drivers potentially unsuited to conduct operations over the highways. We must have these operations cease until these basic safety requirements are met. Therefore, we order the operating authority of David Martinez Espinoza, doing business as David Espinoza Trucking to be immediately suspended for unsafe operations and for lack of active participation in the Pull Notice and BIT Programs. This means that this carrier cannot operate until further order of this Commission.

Because of the serious nature of the allegations that this carrier has failed to comply with any of the safety requirements of the Public Utilities Code since first obtaining operating authority from this Commission, we believe that David Martinez Espinoza, doing business as David Espinoza Trucking should show cause why his operating authority should not be revoked.

ORDER

IT IS ORDERED that:

1. An investigation on the Commission's own motion is instituted into the operations and practices of the respondent, David Martinez Espinoza, doing business as David Espinoza Trucking.

2. Based on the staff's investigation, the Commission concludes that there is substantial evidence to support a finding that the respondent is unfit to conduct operations and he shall be afforded an opportunity to show cause why his operating authority should not be revoked because he has:

- a. Violated Public Utilities Code, Sections 3552 and 3553, and the California Vehicle Code, Section 34501.12 by failing to submit to regularly required California Highway Patrol inspections of his terminal, trucking operation and equipment;

- b. Violated Public Utilities Code, Section 3553 and California Vehicle Code Section 1808.1 by failing to properly enroll the drivers of David Espinoza Trucking in the Department of Motor Vehicles Pull Notice Program;
- c. Violated Public Utilities Code, Section 3553 and California Vehicle Code Sections 1808.1, 12500, 15240 and 15242 by driving a motor vehicle in for-hire transportation after his driver's license was revoked by the Department of Motor Vehicles;
- d. Violated Public Utilities Code, Section 3775 by operating during a period of Commission-ordered suspension for lack of liability insurance;
- e. Violated Public Utilities Code, Sections 3555, 3632, 3634 and General Order 100-M by operating without liability insurance coverage;
- f. Violated Public Utilities Code, Section 3554 by failing to comply with the Commission's workers' compensation insurance coverage requirements;

3. It is further ordered that David Martinez Espinoza's agricultural carrier permit (T-174,128) is upon service of this order immediately suspended for continuing non-compliance with the Pull Notice Program, California Vehicle Code driver's license requirements, and the CHP's BIT Program. David Martinez Espinoza, doing business as David Espinoza Trucking shall not conduct or direct motor carrier operations, or lease equipment to other carriers. If the respondent conducts prohibited operations during the time of this suspension, he is subject to contempt sanctions, fines and criminal prosecution. Such immediate suspension is appropriate given the declaration advanced by the staff, upon which we find there is good likelihood that continued operation by David Martinez Espinoza, doing business as David Espinoza Trucking is a serious and imminent threat to the public safety.

David Martinez Espinoza's agricultural carrier permit will be reinstated from this immediate order of suspension by the Director of the Safety and Enforcement Division upon a showing by David Martinez Espinoza that: the vehicles and operation of David Espinoza Trucking are in full compliance with all of the safety provisions of the Vehicle Code and Title 13 CCR, including the Department of Motor Vehicles Pull Notice Program and the Department of the California Highway Patrol BIT Program (with a notice from the CHP that the BIT and equipment inspections have both been conducted and passed); that evidence of workers' compensation and public liability insurance for David Espinoza Trucking are on file with the Commission; and finally, Espinoza shall also file a written acknowledgement from his public liability insurance carrier that it received a copy of this order and staff's declaration.

4. David Martinez Espinoza is put on notice that unless he can refute staff's evidence or otherwise show cause to the contrary, his operating authority will be revoked because of the serious violations documented in staff's declaration.

5. The Division of Administrative Law Judges (ALJ) shall afford this investigatory proceeding hearing priority so that there will be an expeditious hearing of the facts and whether the Respondent can show cause why his operating authority should not be revoked for cause.

6. The Safety and Enforcement Division staff, if it elects to do so, may present additional evidence at any hearing beyond that described in its declaration supporting this order, either through testimony or documentation. The staff's declaration supporting this order shall be filed in this proceeding's formal file, and shall also be provided to the Respondent, David Martinez Espinoza, when this order is personally served.

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The Executive Director shall cause a certified copy of this order and the supporting declaration to be personally served upon Respondent, David Martinez Espinoza, at 1890 West Louise Avenue, Manteca, California 95336, or if personal service is not possible, by sending it by certified mail to the last known address of record supplied by the Respondent to the Commission.

This order is effective today.

Dated April 10, 1996, at Sacramento, California.

DANIEL WM. FESSLER  
President  
P. GREGORY CONLON  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
Commissioners