

STATEMENTS OF POLICY

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 41]

[M-00041796]

Motor Carrier Fitness Guidelines

The Pennsylvania Public Utility Commission, on April 1, 2004, adopted a final policy statement revising evidentiary criteria used to review applications to provide limousine service and adding factors to be considered in evaluating an applicant's fitness.

Public Meeting held
April 1, 2004

Commissioners Present: Terrance J. Fitzpatrick, Chairperson; Robert K. Bloom, Vice Chairperson; Glen R. Thomas; Kim Pizzingrilli; Wendell F. Holland

Policy Statement re Motor Carrier Fitness Guidelines; Doc. No. M-00041796

Policy Statement

By the Commission:

By order entered March 23, 2001, the Commission adopted a final policy statement to revise the evidentiary criteria used to review applications to provide limousine service. That order was published in the *Pennsylvania Bulletin* on May 5, 2001, and eliminated two evidentiary requirements contained in 52 Pa. Code § 41.14. In particular, the order informed the public that individual limousine applicants were no longer required to prove public need/demand for the proposed service, 52 Pa. Code § 41.14(a), and that the Commission would no longer consider the effect that increased competition will have on existing carriers, 52 Pa. Code § 41.14(c).

This policy statement regarding evidentiary standards for limousine applicants was first applied in *Application of J. Perry Carmerlengo, Jr.*; at Docket No. A-0011560F003 (Order adopted June 6, 2001). However, due to a subsequently filed appeal to Commonwealth Court, further application of this policy statement for limousine carriers was voluntarily stayed by the Commission during the pendency of the litigation. Given the decision of the Pennsylvania Supreme Court in *Elite Industries, Inc., v. Pa. PUC*, 832 A.2d 428 (Pa. 2003), which held that public need is not an indispensable statutory requirement for approval of applications under 66 Pa.C.S. § 1103(a), we are now free to lawfully apply this policy statement. Therefore, effective immediately, the Commission will apply this existing policy statement regarding evidentiary standards to all pending and future limousine application cases.

Fitness Guidelines

At the same time, with the elimination of 52 Pa. Code § 41.14(a) (regarding public need/demand) and 52 Pa. Code § 41.14(c) (regarding effect on existing carriers) from the evidentiary for limousine carriers, it becomes appropriate for the Commission to place greater emphasis on the factors to be considered in evaluating an applicant's fitness under 52 Pa. Code § 41.14(b). Therefore, in order to provide guidance to the industry, as well as our staff, the Commission hereby provides notice that it will consider the following factors in regard to fitness under 52 Pa. Code § 41.14(b) for limousine applicants:

(1) Whether the applicant has sufficient capital, equipment, facilities and other resources necessary to serve the territory requested;

(2) Whether the applicant and its employees have sufficient technical expertise and experience to serve the territory requested;

(3) Whether the applicant has or is able to secure sufficient and continuous insurance coverage for all vehicles to be used or useful in the provision of service to the public;

(4) Whether the applicant has an appropriate plan to comply with the Commission's driver and vehicle safety regulations and service standards contained in Chapter 29, 52 Pa. Code Ch. 29.

(5) The applicant's record of compliance with Commission orders and regulations if any; and

(6) Whether the applicant or its drivers have been convicted of a felony or crime of moral turpitude and remains subject to supervision by a court or correctional institution.

In addition, we note that, as guidelines, these listed factors do not represent a hard and fast set of rules that must be considered in every application. However, as with the several factors used to evaluate the allocation of rail crossing costs, see *AT&T v. Pa. PUC*, 737 A.2d 201 (Pa. 1999), these are the factors that we intend to ordinarily examine in making our determination of fitness under 52 Pa. Code § 41.14(b). These guidelines will apply to all limousine operators on a case by case basis. Moreover, since these guidelines are general in nature, they are relevant to the issue of fitness for all motor carriers and, accordingly, will be used as guidelines for our evaluation of motor carrier applications, where applicable.¹

In conclusion, the existing policy statement adopted at our March 28, 2001 public meeting regarding reduced evidentiary criteria for limousine applicants will be effective immediately and applicable to all pending and future limousine applications. In addition, the Commission is adopting, as guidelines, the various fitness factors described herein and set forth in Annex A for determining an applicant's fitness under 52 Pa. Code § 41.14(b); the guidelines shall be effective upon publication in the *Pennsylvania Bulletin*. Accordingly, pursuant to 66 Pa.C.S. §§ 501, 1103, the Commonwealth Documents Law, (45 P. S. §§ 1201, et. seq.), and regulations promulgated thereunder at 1 Pa. Code §§ 7.1—7.4, the Commission issues this policy statement as set forth in Annex A: *Therefore*,

It Is Ordered That:

1. The existing policy statement regarding evidentiary criteria for limousine applicants, previously adopted by the Commission on March 23, 2001, shall be effective and applicable to all pending and future limousine applications after the adoption date of this order.

2. The Commission hereby adopts the policy statement set forth in Annex A by amending 52 Pa. Code § 41.14. The statement of policy provides guidelines as to the factors to be addressed and considered in determining a motor carrier's fitness under § 41.14(b).

¹ For example, due to Federal deregulation, Federal Aviation Administration Authorization Act of 1994, 49 U.S.C. § 14501, factors (1) and (2) would not be applicable to property carriers and group and party carriers of passengers of 16 or more people.

3. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.

4. The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. The policy statement shall be effective upon publication. The contact person is Rhonda L. Daviston, Assistant Counsel, Law Bureau, (717) 787-6166.

JAMES J. MCNULTY,
Secretary

Fiscal Note: 57-235. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart B. CARRIERS OF PASSENGERS OR PROPERTY

CHAPTER 41. GENERAL ORDERS, POLICY STATEMENT AND GUIDELINES ON TRANSPORTATION UTILITIES

TRANSPORTATION

§ 41.14. Evidentiary criteria used to decide motor common carrier applications—statement of policy.

(a) An applicant seeking motor common carrier authority has a burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need.

(b) An applicant seeking motor common carrier authority has the burden of demonstrating that it possesses the technical and financial ability to provide the proposed service. In addition, authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally. In evaluating whether a motor carrier applicant can satisfy these fitness standards, the Commission will ordinarily examine the following factors, when applicable:

(1) Whether an applicant has sufficient capital, equipment, facilities and other resources necessary to serve the territory requested.

(2) Whether an applicant and its employees have sufficient technical expertise and experience to serve the territory requested.

(3) Whether an applicant has or is able to secure sufficient and continuous insurance coverage for all vehicles to be used or useful in the provision of service to the public.

(4) Whether the applicant has an appropriate plan to comply with the Commission's driver and vehicle safety regulations and service standards contained in Chapter 29 (relating to motor carriers of passengers).

(5) An applicant's record, if any, of compliance with 66 Pa.C.S. (relating to the Public Utility Code), this title and the Commission's orders.

(6) Whether an applicant or its drivers have been convicted of a felony or crime of moral turpitude and remains subject to supervision by a court or correctional institution.

(c) The Commission will grant motor common carrier authority commensurate with the demonstrated public need unless it is established that the entry of a new carrier into the field would endanger or impair the operations of existing common carriers to an extent that, on balance, the granting of authority would be contrary to the public interest.

(d) Subsections (a) and (c) do not apply to an applicant seeking authority to provide motor carrier of passenger service under §§ 29.331—29.335 (relating to limousine service.)

[Pa.B. Doc. No. 04-1363. Filed for public inspection July 23, 2004, 9:00 a.m.]