

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



FILED
09/10/20
04:59 PM

Application of Transit Systems Unlimited,
Inc. for Authority to Operate as
Self-Insured Charter-Party Carrier of
Passengers Pursuant to Public Utilities
Commission General Order No. 115-G.

A.20-03-010

**LATE-FILED PROTEST OF THE CONSUMER PROTECTION AND
ENFORCEMENT DIVISION TO THE APPLICATION OF TRANSIT SYSTEMS
UNLIMITED, INC. FOR AUTHORITY TO OPERATE AS A SELF-INSURED
CHARTER-PARTY CARRIER OF PASSENGERS PURSUANT TO PUBLIC
UTILITIES COMMISSION GENERAL ORDER NO. 115-G**

I. INTRODUCTION

Rule 2.6 (b) of the California Public utilities Commission’s Rules of Practice and Procedure provides that a party may file a protest of the authority sought in an Application. The Consumer Protection and Enforcement Division (CPED) is a party to this proceeding and protests Application (A.) 20-03-010 (Application) filed by Transit Systems Unlimited, Inc (herein “Transit” or “Applicant”) for authority to self-insure under General Order (G.O.) 115-G.

Rule 2.6 (a) provides a Protest must be filed within 30 days after the date the notice of the application first appeared in the Daily Calendar. The Application appeared on the Daily Calendar on March 18, 2020. As explained in CPED’s accompanying Motion for permission to late-file its protest, TEB was unable to prepare and file this protest until now.

G.O. 115-G(6) generally requires a charter-party carrier to maintain insurance or a surety bond in specific, delineated amounts depending on the number and type of vehicles in the Charter-party Carrier’s fleet. Under certain circumstances a charter-party carrier may be exempted from these insurance and surety bond requirements and granted

approval to self-insure upon filing of a plan of self-insurance. Applicant seeks to self-insure in lieu of the standard insurance or surety bond requirements.

Pursuant to Rule 2.6(a) of the California Public Commission's (Commission) Rules of Practice and Procedure, CPED, files this protest to Transit Systems Unlimited, Inc's Application (A.) 20-03-010 (Application).

II. FACTS AND LAW CONSTITUTING THE GROUNDS FOR THE PROTEST

On March 13, 2020, Applicant filed an application with the California Public Utilities pursuant to G.O. 115-G to operate as a self-insured, charter-party carrier. The Application purports to comply with the requirements of G.O. 115-G and is also purported to be "supported by a true and accurate statement of its financial condition and other evidence" in support of a finding by the Commission that Applicant should be granted the ability to self-insure. Applicant claims to be in compliance with reporting requirements set for in G.O. 115-G subsections (4), (6) and (7).

G.O. 115-G(4) provides, among other things, that a charter-party carrier may file and the Commission may approve, an application by a charter-party carrier to qualify as a self-insurer. G.O. 115(G) (4) requires the self-insurer application be supported "by a true and accurate statement of its financial condition" that proves to the Commission that the applicant will "satisfy its obligations for public liability and property damage" in keeping with the limits established by G.O. 115-G.

G.O. 115-G (6) provides, in pertinent part, a charter-party carrier that becomes qualified as a self-insurer with the Interstate Commerce Commission (ICC)¹ may be exempt from the other insurance requirements in G.O. 155-G, where the qualification in G.O. 115-G are met, self-insurance is authorized. The authorization continues for as long as the qualifications remain effective. The Commission may rely on a finding by FMCSA that a charter-party carrier has met the requirements to merit self-insurance status.

¹ The ICC, the Interstate Commerce Commission no longer exists and has been replaced by FMCSA, the Federal Motor Carrier Safety Administration. However, G.O. 115-G still refers to the ICC.

G.O. 115-G (7) provides that where a charter-party applies to become qualified a self-insurer, pursuant to the ICC rules, by pledging other securities or agreements of indemnity required to meet the self-insurance requirement, in lieu the standard G.O. 115 surety bond or insurance requirements, the charter-party carrier is required to provide the Commission with an application stating all of the facts upon which ICC application was based. This information is required by the Commission as a prerequisite to accepting an ICC order or certificate. If such application is approved, charter-party carrier is exempt from furnishing a certificate of insurance or surety bond as is generally required by G.O. 115.

III. ISSUES TO BE CONSIDERED

In her August 28, 2020 Email Ruling, Administrative Law Judge (ALJ) Yacknin preliminarily identified the following issues to be resolved in this Application:

1. What should the Commission require as condition to authority to self-insure? This may include consideration of whether the maintenance of the former ICC's requirements for self-insurance, referenced in Transit's application as including (1) a \$1M letter of credit, (2) excess coverage up to \$5M, and (3) excess insurance for claims between \$5M and \$10M; how those ICC requirements compare to current requirements for insurance or bonds pursuant to GO 115-G; what amount of credit, excess coverage and/or excess insurance will reasonably provide the equivalent insurance or bond coverage as required by GO 115-G.
2. Does Transit meet the above requirements?
3. Does Transit's financial condition demonstrate its ability to satisfy the above requirements without affecting the stability and permanency of its business?

As indicated at the PHC, CPED agrees with these preliminary issues. However, CPED respectfully requests that the issues be modified to explicitly consider the following:

1. Whether Applicant's pledged collateral is sufficient. In Attachment G of A.20-03-010, Applicant claims that it "committed collateral worth \$1,000,000.00 which is unavailable for operations and dedicated solely as a reserve for liability claims." However, GO 115 G(2) specifically requires that charter-party carrier with

vehicles of 16 or more seating capacity have \$5M in protection liability. Applicant operates 69 buses, and its vehicles hold up to 56 passengers.

2. Whether the Commission may approve the Application without the Applicant first obtaining a certification of self-insurance from the Department of Motor Vehicle (DMV). California Vehicle Code (CVC) Section 16053 (a),² provides in pertinent part, where an applicant is a charter-party carrier having twenty-five or more registered vehicles applies to the DMV for a certificate of self-insurance, the applicant must have and retain the ability retain the ability to pay judgments obtained against the carrier.
3. Whether Applicant has obtained the necessary approvals from the ICC/FMCSA as a self-insured carrier. In assessing an application to self-insure, the Commission relies on the authority of other governmental agencies' requirements needed to meet qualifications relating applications to self-insure. In its Application Applicant stated it plans to submit annual financial statements to the ICC, reporting quarterly insurance claims, showing the number, aggregate dollar amount, and nature of insurance claims experience, as well as quarterly reports detailing pending court cases or other actions relating to or arising from its claims experience. However, the Applicant is not registered with the FMCSA as a self-insured carrier and has not included an approved FMCSA, Form BMC-4, Application to Self-Insure, (filed pursuant to 49 U.S.C. 13906) with the Application.
4. Whether the Application correctly represents the Applicant's financial condition and Applicant is financially fit to operate as a self-insured carrier. CPED's Transportation Enforcement Branch (TEB) conducted audits of Applicant's 2016, 2017, and 2018 income taxes. These audits of Transit's financial records show that Applicant's quarterly report reported revenues were significantly lower than the amount showing in Transit's application for self-insurance for years 2017 and 2018. As these quarterly

² Motor Vehicle Code Section § (a) The department may in its discretion, upon application, issue a certificate of self-insurance when it is satisfied that the applicant in whose name more than 25 motor vehicles are registered is possessed and will continue to be possessed of ability to pay judgments obtained against him or her in amounts at least equal to the amounts provided in Section 16056. The certificate may be issued authorizing the applicant to act as a self-insurer for either property damage or bodily injury or both. Any person duly qualified under the laws or ordinances of any city or county to act as self-insurer and then acting as such, may upon filing with the department satisfactory evidence thereof, along with the application as may be required by the department, be entitled to receive a certificate of self-insurance.

reported revenues serve as the basis for calculating Applicant's payments into the Public Utilities Transportation Reimbursement Account (PUCTRA), the underreported financial income results in underpaid PUCTRA fees by Transit.³ Additionally, discrepancies between Applicant's reported income to Transportation Licensing and Analysis Branch (TLAB) and in this Application raise questions on Applicant's financial condition.

IV. CATEGORIZATION, NEED FOR HEARING AND PROPOSED SCHEDULE (RULE 2.1 (C))

CPED agrees that this proceeding should be categorized as "ratesetting". CPED will meet and confer with Applicant to identify whether there are disputed material issues of fact regarding the deficiencies, discrepancies and fitness issues described herein such that evidentiary hearings would be necessary. CPED requests the Scoping Memo include a schedule that would allow for evidentiary hearings.

V. CONCLUSION

CPED respectfully requests that the Commission adopt the categorization, the scoping issues, the need for hearings and schedule as proposed in this protest.

Respectfully submitted,

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September 10, 2020

³ After CPED notified Transit of PUCTRA underpayments, Transit submitted underpayments and penalties to the CPUC in the amounts of \$15,834.52, \$16,778.77, and \$9,545.05 for years 2016, 2017, and 2018, respectively.