

Decision No. 31034

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of GEORGE J. FRATIES,)
doing business as Rock & Gravel Trucking Company, for)
authority to charge less than minimum rates pursuant) Application
to Section 11, Highway Carriers' Act, Chapter 223,) No. 21420
Statutes of 1935.)

In the Matter of the Application of GEORGE J. FRATIES,)
doing business as Rock & Gravel Trucking Company, for)
authority to charge less than minimum rates, pursuant) Application
to Section 11, Highway Carriers' Act, Chapter 223,) No. 21489
Statutes of 1935.)

In the Matter of the Application of GEORGE J. FRATIES,)
doing business as Rock & Gravel Trucking Company, for)
authority to charge less than minimum rates, pursuant) Application
to Section 11, Highway Carriers' Act, Chapter 223,) No. 21589
Statutes of 1935.)

In the Matter of the Application of GEORGE J. FRATIES,)
doing business as Rock & Gravel Trucking Company, for)
authority to charge less than minimum rates, pursuant) Application
to Section 11, Highway Carriers' Act, Chapter 223,) No. 21590
Statutes of 1935.)

In the Matter of the Application of GEORGE J. FRATIES,)
doing business as Rock & Gravel Trucking Company, for)
authority to charge less than minimum rates, pursuant) Application
to Section 11, Highway Carriers' Act, Chapter 223,) No. 21593
Statutes of 1935.)

In the Matter of the Application of GEORGE J. FRATIES,)
doing business as Rock & Gravel Trucking Company, for)
authority to charge less than minimum rates, pursuant) Application
to Section 11, Highway Carriers' Act, Chapter 223,) No. 21709
Statutes of 1935.)

In the Matter of the Application of GEORGE J. FRATIES,)
doing business as Rock & Gravel Trucking Company, for)
authority to charge less than minimum rates, pursuant) Application
to Section 11, Highway Carriers' Act, Chapter 223,) No. 21710
Statutes of 1935.)

In the Matter of the Application of GEORGE J. FRATIES,)
doing business as Rock & Gravel Trucking Company, for)
authority to charge less than minimum rates, pursuant) Application
to Section 11, Highway Carriers' Act, Chapter 223,) No. 21711
Statutes of 1935.)

In the Matter of the Application of GEORGE J. FRATIES,)
doing business as Rock & Gravel Trucking Company, for)
authority to charge less than minimum rates, pursuant) Application
to Section 11, Highway Carriers' Act, Chapter 223,) No. 21712
Statutes of 1935.)

In the Matter of the Application of GEORGE J. FRATIES,)
doing business as Rock & Gravel Trucking Company, for) Application
authority to charge less than minimum rates, pursuant) No. 21791
to Section 11, Highway Carriers' Act, Chapter 223,)
Statutes of 1935.)

In the Matter of the Application of GEORGE J. FRATIES,)
doing business as Rock & Gravel Trucking Company, for) Application
authority to charge less than minimum rates, pursuant) No. 21792
to Section 11, Highway Carriers' Act, Chapter 223,)
Statutes of 1935.)

In the Matter of the Application of GEORGE J. FRATIES,)
doing business as Rock & Gravel Trucking Company, for) Application
authority to charge less than minimum rates, pursuant) No. 21799
to Section 11, Highway Carriers' Act, Chapter 223,)
Statutes of 1935.)

In the Matter of the Application of GEORGE J. FRATIES,)
doing business as Rock & Gravel Trucking Company, for) Application
authority to charge less than minimum rates, pursuant) No. 21800
to Section 11, Highway Carriers' Act, Chapter 223,)
Statutes of 1935.)

In the Matter of the Application of GEORGE J. FRATIES,)
doing business as Rock & Gravel Trucking Company, for) Application
authority to charge less than minimum rates, pursuant) No. 21801
to Section 11, Highway Carriers' Act, Chapter 223,)
Statutes of 1935.)

HARRY A. ENCELL, for Applicant.

C. H. THOMAS, for Applicant.

ROY B. THOMPSON and MARVIN HANDLER,
for the Truck Owners' Association of California.

CHAS. BEGUL, in Propria Persona.

TONY VOLPA, for Volpa Brothers.

ORIGINAL

BY THE COMMISSION:

O P I N I O N

In the above-entitled applications filed by George J. Fraties, doing business as the Rock & Gravel Trucking Company, authority is sought to operate dump trucks in the transportation

of materials for less compensation than the minimum rates prescribed by the Commission in its Order in Decision No. 22836, dated May 25, 1936, in Case No. 4087.

Public hearings were conducted on the above-entitled applications before Examiner Hunter at San Francisco. (1)

At the hearing on April 26, 1938, applicant stated, in effect, that it was unprepared to make its showing in support of Applications Nos. 21709, 21710, 21711, 21712, 21791, 21792, 21799, 21800, and 21801, and requested a continuance of thirty days. The presiding examiner stated that the request would be referred to the Commission and if it was determined that applicant should be granted further hearing, it would be so notified, otherwise the matters would be taken under submission.

In view of the fact that applicant has made its entire showing upon its system operation, and each application deals with dump truck operation in various sections of the State, all involving State Highway maintenance work, the entire group of applications will be disposed of in one order.

Aside from the rates prescribed by the Commission, the following tabulation has been prepared from the record in these proceedings:

(1) Hearings on Applications Nos. 21420, 21489, 21589, 21590, and 21593 were held November 27th and December 6th, 1937, and January 10th and 17th, 1938. At the latter date these matters were taken under submission.

Hearing on Applications Nos. 21709, 21710, 21711, 21712, 21791, 21792, 21799, 21800, and 21801 was held April 26, 1938.

RESULTS OF ELEMENTS SURROUNDING APPLICATIONS

Appl. No.	Date Filed	Date of Hearing	Equipment		Approximate Volume of Work	Location of Work	Hourly Rates with Driver Proposed in Application			Date Work Started
			No.	Cu. Yds.			A	B	C	
21420	8-20-37	11-27-37 12--6-37 1-10-38 1-17-38	6	3	30 Days	Dist. III. - Grass Valley, Nevada County	\$2.33 ⁽¹⁾	\$2.03 ⁽¹⁾	\$2.23 ⁽¹⁾	
21489	9-27-37		2	3	300 Hours	Dist. I. - Eureka	2.33 ⁽¹⁾	2.03 ⁽¹⁾	2.23 ⁽¹⁾	
21589	11-16-37		2	3½	90 Days	Dist. V. - Santa Barbara County	2.40 ⁽²⁾	2.03 ⁽²⁾	2.28 ⁽²⁾	
21590	11-16-37		6	3	20 Days	Dist. III. - Marysville	2.33 ⁽¹⁾	2.03 ⁽¹⁾	2.23 ⁽¹⁾	
21593	11-18-37		2	3½	100 Days	Dist. V. - Monterey County	2.40 ⁽³⁾	2.03 ⁽³⁾	2.28 ⁽³⁾	
21709	1-14-38	4-26-38	4	4	\$5,000.	Dist. IV. - Marin and Sonoma Counties	3.00 ⁽⁴⁾	2.90 ⁽⁴⁾	2.55 ⁽⁴⁾	1--5-38
21710	1-14-38		4	3	\$5,000.	Dist. IV. - San Mateo and Santa Cruz Counties	2.35 ⁽⁵⁾	2.85 ⁽⁵⁾	2.85 ⁽⁵⁾	2--1-38
21711	1-14-38		4	4	\$3,000.	Dist. III. - Feather River H'way Marysville	2.60 ⁽⁶⁾			1-11-38
21712	1-14-38		4	3	\$5,000.	Dist. IV. - Santa Cruz and Santa Clara Counties	2.65 ⁽⁵⁾	2.55 ⁽⁵⁾	2.35 ⁽⁵⁾	2--3-38
21791	3--1-38		2	3	500 Hours	Dist. I. - Eureka	2.33 ⁽¹⁾			3--3-38
21792	3--1-38		2	3	500 Hours	Dist. I. - Eureka	2.33 ⁽¹⁾			3-10-38
21799	3--7-38		2	3½	\$ 500.	Dist. V. - Monterey County	2.33 ⁽¹⁾			2-10-38 ^f
21800	3--7-38		2	3	500 Hours	Dist. I. - Eureka	2.33 ⁽¹⁾			3--7-38
21801	3--7-38		2	3	500 Hours	Dist. I. - Eureka	2.33 ⁽¹⁾			3--3-38

A = Power Loading = Rate Fixed by Decision No. 28836 =	(1)	(2)	(3)	(4)	(5)	(6)
B = Hand " " " " " " " =	\$2.43	\$2.53	\$2.83	\$3.15	\$2.75	\$2.90
C = Other " " " " " " " =	2.03	2.03	2.33	2.65	2.35	
	2.23	2.28	2.58	2.90	2.55	

NOTE: All work in Northern California, except Dist. V, Santa Barbara County (Appl. 21589).
= Work finished February 21, 1938.

It may be noted from this tabulation that in at least four cases applicant actually performed at lower rates than those prescribed by the Commission before the applications were filed, in fact in one instance (Application No. 21799) the work was finished before the filing. The record is not complete as to when the work started on some of the jobs, due to the fact that applicant was unable to give this information.

A review of the rates proposed by applicant, as compared with minimum rates prescribed by the Commission, shows that the difference varies from a proposed reduction of 43 cents to a proposed increase of 50 cents per truck-hour. The majority of the work involved herein, however, falls within the class of power loading where applicant seeks authority to perform under rates 10 cents per hour less than those prescribed by the Commission. As no authority is required to perform at rates in excess of minimum rates prescribed by the Commission, such requests should be dismissed.

The record shows that applicant is engaged in the business of operating dump trucks for hire and at this time has a fleet of about twenty trucks. In addition to the dump truck operation, applicant has a number of small power shovels used in connection with its dump truck operations. The work covered in the above-numbered applications all deals with State Highway maintenance in the way of removal of slide materials and improvements of the highways throughout various parts of the State. In addition to the Highway Maintenance work, applicant also conducts a general contracting business where its dump trucks and power shovels are employed.

Applicant's entire operations, both Highway Maintenance and off-highway work, are conducted through one organization where all the cost records are grouped together in one set of accounts.

As set forth above, the matters involved herein, with few exceptions, all deal with the question as to whether or not applicant

should be permitted to perform under rates less than those prescribed as minimum by the Commission. Where an applicant comes before the Commission requesting such authority, it is incumbent upon him to make an affirmative showing in support of such application in the way of evidence and testimony before the Commission can reasonably make its order granting the relief sought.

While it is the policy of the Commission to be as lenient and considerate as it consistently can with all applicants, particularly those who are not equipped with the assistance of a technical staff to present their cases before the Commission, nevertheless presentations must in all cases be reasonably complete and accurate. From a review of this record it is apparent that applicant herein has failed in many respects to make a reasonable showing before this Commission.

One serious objection to applicant's showing before the Commission is that in each case where matters have been called for hearing, it has been unprepared to proceed with the presentation for lack of preparation in the way of both complete documentary evidence and testimony. This situation obtained notwithstanding the fact that in many cases applicant was actually performing at rates less than those prescribed by the Commission. The first group of cases was called on November 27, 1937, at which time applicant advised the Commission that its bookkeeper had recently left its employment and it was therefore not in a position to proceed with the showing. The matter was adjourned until December 6, 1937, to permit applicant to prepare exhibits and testimony in support of these applications. At that time the matters were taken under submission with respect to Applications Nos. 21420, 21489, 21589, 21590, and 21593. Shortly thereafter the Commission received a letter from applicant, under

date of January 3, 1938, confirming a statement made to one of the Commission's representatives that it was applicant's desire to withdraw these applications. In order that this letter could be presented as part of the formal record, the matters were reopened for further hearing by the Commission's order in Decision No. 30502, dated January 5, 1938, and set for further hearing on January 10, 1938.

During the course of the hearing on January 10, 1938, it developed that applicant's witnesses were unable to answer questions relative to applicant's Exhibit No. 3 and it requested an adjourned hearing. Such an adjourned hearing was conducted January 17, 1938, at which time the record on Applications Nos. 21420, 21489, 21589, 21590, and 21593 was taken under submission, with the understanding that the letter under date of January 3, 1938, referred to above, would be disregarded.

With respect to Applications Nos. 21709, 21710, 21711, 21712, 21791, 21792, 21799, 21800, and 21801, these matters were heard April 26, 1938. At this hearing counsel for applicant stated that he was unprepared to proceed with the hearing and requested that an extension of time of thirty days be granted in order that he might prepare evidence and arrange to have an important witness present to support the applications. As in the case referred to above, this request was made in the face of the fact that applicant was in a number of instances actually performing under rates less than the minimum prescribed by the Commission. Requests for continuances are not unusual in this type of proceeding before the Commission, but in this case, where we find an applicant actually performing under rates less than those prescribed as minimum by the Commission and asking for further time in which to prepare his case, without agreeing to cease operation until the matter can be determined, the Commission must conclude that a request for an extension of time should be granted only upon conclusive evidence that such a request

is justified, which does not appear from this record. Therefore this request is denied.

The record shows that applicant's witnesses were both uninformed as to the complete physical operation and wholly unable to develop an accurate and complete statement of the operating results based upon actual records.

Applicant's showing was presented through three different witnesses, no one of whom was able to completely answer various questions dealing with operations and office accounting. In fact considerable time was consumed in an effort to get a complete answer to matters relating to operating conditions in the field and the office records. At the hearing held on December 6, 1937, applicant presented its Exhibit No. 1 purporting to show the cost of operation in support of its contention that it could perform for less than the prescribed minimum rates. The cost estimate was based upon averages as near as they could be prorated from the records, notwithstanding the fact that it was admitted the difference in the hourly cost of jobs varied as much as 30 per cent. At the hearing on January 10, 1938, applicant stated that its Exhibit No. 1 was inaccurate in many respects and, in fact, that it could not be supported by the actual cost record, whereupon it introduced a substitute exhibit designated as Exhibit No. 3. Upon cross-examination this revised exhibit was admitted to be in error in a number of respects - wanting as to certain items of expense and unexplained as to others. In many of the accounts applicant apportioned the general expense between Highway Maintenance work and other private contract work off the highways system on an arbitrary basis, which could not be supported in the record; in fact, it was admitted that applicant's records have been kept in such a way that it is not possible to identify the various expense accounts with the work covered in the respective applications under consideration.

In summing up the evidence of this record, it is clear that applicant has failed to make such an affirmative showing as would justify the issuance of an order authorizing it to perform for-hire dump truck operations at rates less than those prescribed as minimum in said Decision No. 28236, primarily for the reason that it has not come forward promptly with a reasonably complete, accurate, and convincing presentation when the matters have been set for hearing. On the other hand, it has sought delays notwithstanding the fact that it was at those various times actually operating at a number of the locations involved herein at rates less than those prescribed by the Commission.

The record shows that it is applicant's plan to bid on State Highway Maintenance work at rates less than those prescribed by the Commission and at the same time file application with the Commission for authority to perform under such lesser rates. It is apparent that applicant's reason in pursuing this course is to secure contracts in competition with other for-hire dump truck operators who bid on such jobs and employ the minimum rates prescribed by the Commission. It is the Commission's policy to see that all such for-hire operators get an equal chance to enjoy at least a portion of such work upon an equal basis. Such a standard can be maintained only upon careful consideration to all applications to perform for-hire truck operations at rates less than the minimum prescribed by the Commission.

Upon this record the Commission is convinced that it should dismiss all the above-entitled applications in so far as they request authority to operate at rates in excess of the minimum prescribed by the Commission, and deny all applications seeking authority to operate at rates less than those prescribed by the Commission, and the following order will so provide.

O R D E R

Public hearings having been held in the above-entitled proceedings and the matters being now ready for decision,

IT IS HEREBY ORDERED:

I. That applicant's request for a further hearing in Applications Nos. 21709, 21710, 21711, 21712, 21791, 21792, 21799, 21800, and 21801 is hereby denied.

II. That the above-entitled applications, in so far as authority is sought to perform for-hire dump truck operations at rates less than those prescribed as minimum in the Commission's order of said Decision No. 28836 are hereby denied.

III. That the above-entitled applications, in so far as they seek authority to perform for-hire dump truck operation at rates in excess of those prescribed as minimum in the Commission's Order of said Decision No. 28836, are hereby dismissed.

The effective date of this Order shall be ten (10) days from the date hereof.

Dated at San Francisco, California, this 27th day of June, 1938.

William H. Brown
Leon A. Whelan
James R. Brown
La. St. Valerius
Ray & Ciley
Commissioners