

DECISION NO. 32229

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of R. E. BUGBEE and others for )  
Section 10 Relief. )

**ORIGINAL**  
Application No. 23229

In the Matter of the Application )  
of R. E. BUGBEE and others for )  
Section 10 Relief. )

Application No. 23230

William Guthrie, for applicants

Earl Smith, for Consolidated Rock Products  
Company, interested party

T. A. L. Loretz, by L. W. Smith, for Blue  
Diamond Ltd., interested party

Alfred E. Rogers, for Pacific Rock & Gravel  
Company, interested party

W. F. Thompson, in propria persona

BY THE COMMISSION:

O P I N I O N

By these applications R. E. BUGBEE, J. H. CLAUSMAN, E. J. DENMAN, GILRUTE DENMAN, E. A. ESCHERICH, C. J. GEAREHART, E. J. GRAY, P. S. HEMENHOFER, C. W. HOSTETTER<sup>(1)</sup>, L. L. KANE, NORBERT KUBEIKA, JAKE M. KYLE, LEO D. KYLE, T. S. LEE, OTT L. LEWIS, CEAS. R. MILLS, K. E. PARKER, EMMA PRINZ, H. A. SKINNER, BERT C. SPENCER, T. A. TAVIS, HARRY WIECEMAN and N. E. WILLIAMS, seek authority to transport sand, gravel, and crushed rock in dump trucks from the producing plant of John D. Gregg at lesser rates than those set forth in City Carriers' Tariff No. 6 and Highway Carriers' Tariff No. 7 of Decision No. 32566 as amended<sup>(2)</sup>.

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(1) The application was amended by dismissing the petition of C. W. Hostetter as an applicant.

(2) Decision No. 32566 as amended in Cases Nos. 4246 and 4434, established minimum rates, rules and regulations of state-wide application for the transportation of sand, gravel, crushed stone and other named materials, in bulk in dump truck equipment.

Both applications set forth that each of said applicants is engaged in transporting rock products by dump trucks for John D. Gregg from a producing plant located at Roscoe, California, to various destinations within the consuming area in the neighborhood of said producing plant.

By Application No. 23229 the applicants request that the proposed rate of 7 cents per ton from the producing plant of John D. Gregg to the road oil mixing plants of Griffith Company, Southwest Paving Company, Curtis Paving Company and Los Angeles Paving Company, situated one-half mile or less apart, and the proposed rate of 10 cents per ton from said producing plant to the road oil mixing plant of Goode & Schroeder, less than one mile apart, be authorized; that each of the said road oil mixing plants consumes a large tonnage of sand, gravel and crushed rock; that the transportation of rock products to two of the said road oil mixing plants has been accomplished between other deliveries from the John D. Gregg producing plant, and that the business is desirable to the applicants.

Application No. 23230 sets forth that applicants desire to transport, at minimum rates existing prior to January 3, 1940, the rock products which said John D. Gregg has contracted to sell prior to that date; that the list of said contracts are attached to the application.

The applications were publicly heard on a consolidated record in Los Angeles on February 6, 1940 before Examiner Jacobsen.

Witness Gregg stated that the distance between his producing plant and the road oil mixing plants of Griffith Company, Southwest Paving Company, Curtis Paving Company and Los Angeles Paving Company was one-half mile or less and the distance between his plant and the road oil mixing plant of Goode & Schroeder was

less than one mile. He stated that the tonnage delivered to the Griffith Company and Southwest Paving Company varied from 6,000 tons to 12,000 tons per month, and tonnage to Curtis Paving Company, Los Angeles Paving Company and Goode & Schroeder was quite small and the business from these latter three plants was more anticipated than actual. He estimated that the revenue produced by the hourly rates<sup>(3)</sup> would be approximately 20 per cent less than that resulting from the use of the proposed rate of 7 cents per ton for deliveries to the plant of the Southwest Paving Company which is the nearest of the group to his plant. This comparison is based upon his estimate of four round trips per hour to the nearer plants and three trips per hour to the Goode & Schroeder plant. This witness stated that he preferred not to pay carriers by the hour as he did not have control over their performance and under the provisions of the Tariff the carrier is required to assess a minimum charge of one hour regardless of the number of trips made.

None of the applicants testified in their own behalf and no cost studies or operating data were presented to show that the proposed rates would be compensatory to the carriers. The only support of the proposed rates was a comparison of the revenue of 14 of the applicants for deliveries to the Southwest Paving Company's plant during the month of January of this year, made by the shipper. This comparison showed the revenue from the hourly rate paid the carriers related to that the proposed rate of 7 cents per ton would produce, showing \$60.17 more revenue on the weight basis. The time operated on these deliveries by the various carriers during this month ranged from a total of 42 minutes to 25 hours and 5 minutes covering 1 to

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(3) At this time charges based on hourly rates are assessed for transportation of rock products to Griffith Company and Southwest Paving Company plants from the Gregg producing plant.

7 working days respectively. This comparison shows charges based only upon the actual time involved and does not take into consideration the application of the rule regarding minimum charges of one hour each.

The shipper witness stated that he had no basis of comparing revenue on the two rate bases in regard to movements to the Goode & Schroeder plant as so few shipments have been made to this destination. He estimated, however, that 3 round trips could be made in an hour.

While it is true that, through the shipper, the applicants indicated that added business was available from the deliveries to Griffith Company and Southwest Paving Company, no information was presented showing what the use factor of the carriers was with or without these deliveries to the road oil mixing plants, and whether the general movements of rock products other than to the road oil mixing plants would be penalized by the application of a lesser rate for movements to these road oil mixing plants.

No protests were offered to the volume of the rates requested; however, a protest was registered relative to the method of obtaining the power of attorney from the applicants.

A rock producer located on the east side of the Los Angeles area having a similar movement to that in question from his plant to a nearby road oil mixing plant, testified that he had no objection to the establishment of the rates requested, if such rates were available to carriers transporting rock products for him.

In testifying relative to Application No. 23230, Witness Gregg stated that of the contracts entered into prior to January 3, 1940, approximately 20,000 tons of sand, gravel and crushed rock were undelivered on that date, and requested that

the applicants be authorized to charge the minimum rates established in Decision No. 28836 as amended by Decision No. 29172.

None of the applicants testified in support of this application and no cost data or other operating information was presented.

When it is considered that the record is entirely devoid of operating cost data; that none of the applicants testified in their own behalf; and the testimony in support of the rates requested is confined more to a request on the part of the shipper than that of the carriers, it is not convincingly shown that the proposed rates are compensatory. Section 10 of the City Carriers' Act provides that " \* \* \* the Railroad Commission shall, upon finding that the proposed rate is reasonable \* \* \* authorize such rates less than the minimum rates established \* \* \* ". When the proposed rates have not been shown to be compensatory, it is clear that the Commission cannot find them to be reasonable.

The application will be denied without prejudice and it will be so ordered.

O R D E R

Public hearing having been held in the above entitled proceedings, the matters having been submitted, and the Commission being fully advised,

IT IS HEREBY ORDERED that Applications Nos. 23229 and 23230 be and they are hereby denied without prejudice.

Dated in San Francisco, California, this 5<sup>th</sup> day of March, 1940.

Ray L. Riley  
John M. Hoover  
Robert W. ...  
Justin S. ...  
Commissioners.