

ORIGINALDecision No. 67575

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of)	
TROJAN TRUCKING SERVICES, INC., a)	
corporation, of Anaheim, California,)	
for permits to operate as a Radial)	Application No. 46635
Highway Common Carrier, (Appln.)	
No. 30-4132-R), and a Highway Contract)	(Filed March 30, 1964)
Carrier, (Appln. No. 30-4133-H), for)	
the transportation of rock and sand,)	
Orange Co, (File No. T-78,207).)	

George Willson, for applicant.
Enright, Elliott & Betz, by Joseph T. Enright and Michael J. Fitzpatrick, for Rodeffer Industries, interested party.
Robert C. Marks, for the Commission staff.

O P I N I O N

On March 30, 1964, applicant filed the above-entitled application for a radial highway common carrier and a highway contract carrier permit and paid the fees prescribed by law.

A public hearing was held before Examiner Rogers in Los Angeles on June 12, 1964, and the matter was submitted on that date.

In the application, it is alleged that the applicant is a California corporation formed on March 11, 1964. It is further alleged that the applicant's sole piece of transportation equipment is a half-ton pickup truck; that the sole commodities to be transported are rock and sand; and that the services are to be performed in Orange County.

Roy Walton, applicant's president, testified that he was in the business of transporting ready-mixed concrete or concrete components from 1944 to 1959; that in September, 1959, he became superintendent of the ready mix plant of Rodeffer Industries; and that he maintained this position until April 30, 1964, at which time he resigned and thereafter, on May 1, 1964, became president of the applicant corporation.

The application herein shows applicant had \$6,000 cash on hand and \$5,000 accounts payable. Exhibit 1 herein, filed by applicant, shows \$3,518 cash on hand on May 31, 1964, and an advance of \$5,000 as a liability. This exhibit also shows \$1,000 in capital stock issued; that for the period ending May 31, 1964, there was no income; and that the accrued expenses included \$1,666 in salaries. Applicant's president testified that the salaries are for himself and another employee, Bill Swan, a dispatcher employed by Rodeffer Industries until April 30, 1964. The sole stockholder of the applicant corporation, Walton said, is Mr. W. F. Webster. He further testified that he personally has a net worth of \$33,750; that checks for expenses require two signatures, his and that of Philip Hebebrand, the bookkeeper of Rodeffer Industries, who is not employed by nor paid by applicant; that the office of the applicant is in the office building of Rodeffer Industries; that the applicant pays \$150 a month to Rodeffer Industries for the use of the office, for a telephone which has the same number as Rodeffer, and a telephone answering service; that the \$5,000 liability was advanced by Mr. Rodeffer to enable the applicant to commence business; that 10 shares of \$100 per share par value stock have been issued by the corporation and are all owned by Mr. Webster; that the applicant expects to

net approximately \$2,000 to \$3,000 per month from the five per cent of the transportation revenues after payment to subhaulers; and that there is no agreement to rebate any portion of this five per cent to Mr. Rodeffer, Rodeffer Industries, or any other person.

Roy Walton further testified that applicant has an agreement with Rodeffer Industries to haul from two plants; that it has no lease on the office space with Rodeffer, but operates on a month-to-month tenancy; and that pending the commencement of operations by applicant, he is working as a dispatcher for Rodeffer Industries. He said that applicant would haul for other shippers.

Mr. W. F. Webster testified that he owns all stock of the applicant corporation and is chairman of its board of directors; that he is the secretary-treasurer and comptroller of Rodeffer Industries; that he owns no stock in Rodeffer Industries; that he is a member of the board of directors of Rodeffer Industries; that he has invested \$1,000 in the applicant corporation so far; that he has a net worth of \$60,000; that if more cash is needed to keep the applicant operating, he will either advance the money or buy additional stock in the applicant; that Trojan Trucking Services, Inc., is his corporation; that no portion of the five per cent of the transportation charges permitted by Minimum Rate Tariff No. 7 to be retained will be remitted to Mr. Rodeffer or Rodeffer Industries; that applicant has a \$300,000 bodily injury and property damage policy on file; and that the applicant has a subhaul surety bond, as required by this Commission.

Mr. Rodeffer testified that he is the president of Rodeffer Industries; that he is the sole stockholder in the corporation; that there is no agreement for any rebates or

splitting of fees between applicant and Rodeffer Industries or himself; that he needs the services proposed by the applicant; and that he will not tolerate any kickbacks; and that Rodeffer Industries loaned \$5,000 to applicant so it could commence business.

On behalf of the Commission staff, it was argued that the record shows that the applicant lacks the financial ability to continue the operation, but that if the Commission finds that the applicant has the financial ability, the record also shows such a unity of interest between Rodeffer Industries and applicant that their operations cannot be conducted at arm's length, and that therefore any permit issued to applicant should be so restricted that in the event any property is transported for Rodeffer Industries, 100 per cent of the minimum rates should be paid to the subhauler actually carrying the property. The applicant argues that the record shows it has sufficient financial backing to render the service and that there is no showing of any dishonesty or abuse.

Upon consideration of the evidence herein, the Commission finds that:

1. Trojan Trucking Services, Inc., is a California corporation formed on March 10, 1964, for the purposes, among others, of transporting sand and gravel as a radial highway common and highway contract carrier.
2. The sole stockholder of applicant is W. F. Webster, who is the secretary-treasurer and comptroller of Rodeffer Industries and a member of the board of directors of said corporation.
3. Applicant is authorized by its articles to issue 250 shares of its stock having a par value of \$100 per share;

10 of said shares of stock have been issued to Mr. W. F. Webster, and no shares have been issued to any other person or entity.

4. Rodeffer Industries is a rock, sand and gravel producing corporation; all of the stock of said corporation is owned by Mr. Rodeffer.

5. Trojan Trucking Services, Inc., has three officers, including the president, Roy Walton; none of said officers are stockholders in applicant corporation, nor are they stockholders in Rodeffer Industries; Rodeffer Industries loaned \$5,000 to applicant to commence business; checks for expenses of applicant require the signature of Rodeffer's bookkeeper.

6. Applicant seeks a highway contract carrier permit and a radial highway common carrier permit; it intends to transport rock and sand for Rodeffer Industries between points in Orange County; said transportation of rock and sand will be at the rates prescribed by Minimum Rate Tariff No. 7; and it has the subhaul surety bond and the bodily injury and property damage insurance required by this Commission.

7. Applicant has no transportation equipment of its own, but will use other carriers for the transportation of sand and gravel; applicant proposes to pay said carriers 95 per cent of the rates prescribed in Minimum Rate Tariff No. 7.

8. Applicant's office will be in property owned by Rodeffer Industries; applicant will pay Rodeffer Industries \$150 per month for rental of office space, telephone services and answering service; applicant's telephone number will be the same as the number of Rodeffer Industries, but will be listed in the telephone directory under applicant's name.

9. Applicant is entitled to have issued to it radial highway common carrier and contract carrier permits as hereinafter conditioned.

10. There is such unity of interest between applicant and Rodeffer Industries and Mr. Rodeffer, through applicant's sole stockholder and board chairman and Rodeffer Industries' secretary-treasurer and comptroller, Mr. Webster, that regulatory objectives require that applicant's permits be conditioned so as to require that other carriers engaged to transport property for Rodeffer Industries or its subsidiaries, or of the customers or suppliers of said companies, be paid not less than 100 percent of the applicable minimum rates and charges.

On the foregoing findings, the Commission concludes that radial highway common carrier and highway contract carrier permits should be issued to Trojan Trucking Services, Inc., conditioned in accordance with Finding 10.

O R D E R

IT IS ORDERED that the Secretary of the Commission issue to Trojan Trucking Services, Inc., a radial highway common carrier permit and a highway contract carrier permit limited to the transportation of rock and sand in dump truck equipment to, from, and between points and places in Orange County, California, subject to the following condition:

Whenever permittee engages other carriers for the transportation of property of Rodeffer Industries, Inc., subsidiaries of Rodeffer Industries, Inc., or the customers or suppliers of said companies, permittee shall not pay such carriers less than

100 percent of the applicable minimum rates and charges established by the Commission for the transportation actually performed by such other carriers.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 21st day of July, 1964.

Frederick B. Hallock
President

George W. Page

George T. Brown

William L. Bennett
Commissioners

I will file a dissent
John J. Fitchell

COMMISSIONER PETER E. MITCHELL DISSENTING:

Section 3572 of the Public Utilities Code controls the issuance of a permit to operate as a highway contract carrier or a radial highway common carrier. The requirements of the section are inflexible and are the regulatory precepts applied by this Commission in granting permits. Conformity with the provisions therein is essential.

"Section 3572. Any highway carrier desiring a permit to operate as a highway contract carrier or a radial highway common carrier shall file a petition therefor with the commission. The petition shall set forth:

- (a) The name and address of the applicant.
- (b) The names and addresses of its officers, if any.
- (c) Full information concerning the financial condition and physical properties of the applicant.
- (d) Such other information necessary to the enforcement of this chapter as the commission may require.

Before a permit is issued, the commission shall require that the applicant establish financial responsibility. The commission may, with or without hearing, issue or refuse to issue the permit. If the commission finds that the applicant possesses the required financial responsibility to perform the operations proposed, it shall issue a permit. The commission may attach to the permit such terms and conditions as, in its judgment, are required to assure protection to persons utilizing the operations.

Except as otherwise provided in this chapter, upon compliance by an applicant with this chapter, the commission shall issue a permit. (Part of former Sec. 3. Amended 1955, Ch. 1725.)"

The majority decision fails to make a finding that "the applicant possesses the required financial responsibility to perform the operations proposed". Cumulative with Section 3572, the Commission staff placed in issue the financial ability of the applicant to

perform. The Commission is bound to make a finding, one way or another, on financial responsibility (California Motor Transport Co. v Public Utilities Commission 59 C 2d 270). There is no discretion. It has not done so (See Findings 1 through 10).

Application No. 46635 was filed by Trojan Trucking Services Inc. for a Radial Highway Common Carrier Permit and a Highway Contract Carrier Permit to transport rock and sand in Orange County.

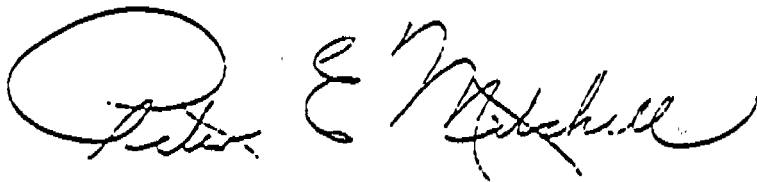
Applicant has not demonstrated that it has the financial ability to acquire trucks and other equipment needed to engage in business as a prime carrier nor does it have the cash resources for the payment of expenses which it would necessarily incur in such an operation prior to its collection of revenues from the customers for whom it would perform transportation services.

The applicant has no equipment and proposes to perform its services by utilizing subhaulers to whom it will pay 95% of the prescribed minimum tariff rate, retaining 5% for itself. This type of operation can best be described as a brokerage service wherein the applicant contemplates engaging in business as a motor transportation broker (Section 4803, Public Utilities Code). Thus, the applicant needs a minimal amount of financial responsibility, since it would have no investment in property, in equipment, and little personnel expense.

In my opinion, applicant's capitalization has not been established on a basis which supports its proposed operations as a highway contract carrier or a radial highway common carrier. Section 3572 makes it mandatory for the Commission to find that the applicant has the financial responsibility to perform the operations

proposed before issuing a permit. It is not sufficient merely to find that the applicant's assets exceed its liabilities. (In this instance, the liabilities are in excess of the assets as per the May 31, 1964, balance sheet)

I would therefore deny the application on the present record. Phronesis dictates that the applicant has failed to establish financial responsibility.

A handwritten signature in cursive script, reading "Peter E. Mitchell". The signature is written in dark ink and is positioned above a horizontal line.

Peter E. Mitchell, Commissioner

July 23, 1964