

ORIGINALDecision No. 69828

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of Donald R. Hargrove, an individual,)
doing business as HARGROVE TRUCKING)
CO., of Sepulveda, for a permit to)
operate as a cement contract carrier)
(Application No. 19-57203, CC-G),)
Los Angeles County, (File No. 76,515).)

Application No. 46510
(Filed December 23, 1963)

Donald R. Hargrove, in propria persona, applicant.

Russell & Schureman, by R. Y. Schureman, for Max Einswanger Trucking, Matich Transportation Co., Daniel Lohnes Trucking Co., Valley Transportation Co., Phillips Trucking and More Truck Lines; David K. Graham, for Kaiser Cement and Gypsum Corp.; George H. Roe, for California Portland Cement Co.; and O'Melveny & Myers, by Lauren M. Wright, for American Cement Corp., protestants.

Palmer F. Kinne, for Beverly Trucking Co., and George B. Shannon, for Southwestern Portland Cement, interested parties.

Donald J. Harvey, for the Commission staff.

O P I N I O N

Donald R. Hargrove, an individual, doing business as Hargrove Trucking Co., by this application requests a permit to operate as a cement contract carrier from cement mills in Southern California outside of Los Angeles County to points of destination in Los Angeles County.

A public hearing was held before Examiner Mooney at Los Angeles on December 14, 1964.

The application was filed December 23, 1963. An amendment to the application, filed December 30, 1963, requested that the sought permit be granted pursuant to the "grandfather" provisions of Section 3623 of the Public Utilities Code. Applicant did not operate during

the "grandfather" period and could not qualify under the "grandfather" provisions. He withdrew the amendment at the outset of the hearing and presented evidence for new authority. Applicant stated that if the sought permit were granted, he would not object to a subhaul restriction.

Applicant testified that he has been employed as general manager of Western Aggregates, Inc., since February, 1964; that Western Aggregates, Inc., operates a rock quarry and crusher and does not ship or receive cement; that for the 16 years prior to February, 1964, he was employed in the cement trucking industry; and that his experience in the cement trucking industry included dispatching, maintenance of equipment and driving cement trucks. He stated that if the sought authority is granted he would supervise his carrier operation and would continue in his present position with Western Aggregates, Inc.

Applicant testified that he purchased a flat bed truck and trailer in April, 1963; that his equipment has been leased to Beverly Trucking Co. since that date; that the equipment is used by Beverly Trucking Co. to haul cement; that he will terminate the lease if the sought permit is granted and will operate as a subhauler primarily for Beverly Trucking Co.; and that he intends to obtain additional hopper-type equipment. The witness stated that he leases terminal facilities in North Hollywood for \$200 per month; that the terminal covers an area of 300 feet by 80 feet and includes a building 100 feet by 40 feet in size; that the lessor of the terminal is not connected with Beverly Trucking Co.; that the unit of equipment he leases to Beverly Trucking Co. and three additional units of equipment operated by Beverly Trucking Co. are parked here; that Beverly Trucking Co. does not pay him for parking its equipment at the terminal but does pay him \$100 a month for the use of his maintenance facilities. He explained

that he performs his own inspection, maintenance and repair of the equipment he leases to Beverly Trucking Co.; that he carries personal injury and property damage liability insurance on the equipment; that it is maintained in a safe condition and will not endanger the safety of the public or impair the condition or maintenance of the public highways; and that the equipment is regularly checked by the California Highway Patrol.

Applicant testified that he was issued radial highway common carrier and highway contract carrier permits by the Commission in August, 1963; that both permits are restricted to subhauling; and that he has never operated under his permits and has had no previous experience as a for-hire carrier. He stated that his net worth is \$39,000 and that he is fairly familiar with transportation rates and regulations.

The president of Beverly Trucking Co. testified that he and his wife own 100 percent of the shares of stock in Beverly Trucking Co.; that he has a one-third ownership interest in Western Aggregates, Inc.; and that he owns less than 3 percent of the shares in Beverly Building Materials Company. He stated that several of the officers in Western Aggregates, Inc. are also officers in Beverly Building Materials Company. The witness explained that in May, 1963, he was informed by applicant that applicant wanted to go into the cement hauling business; that he agreed to lease applicant's equipment until applicant could obtain the necessary authority from the Commission; that Beverly Trucking Co. is a certificated cement carrier;^{1/} that practically all for-hire trucking of cement into and for Beverly Building Materials Company is performed by Beverly Trucking Co.; that

^{1/} Beverly Trucking Co. was granted a cement carrier certificate by Resolution No. 13823, Sub. No. 31, dated June 23, 1964, which includes the Counties of Los Angeles, Orange, San Bernardino and Ventura. A restriction in the certificate provides that other carriers engaged by Beverly Trucking Co. to transport the property of Beverly Building Materials Company or Western Aggregates, Inc., or the customers or suppliers of said companies shall be paid 100 percent of the applicable minimum rates.

Beverly Trucking Co. does haul cement to several other consignees with whom the witness has no connection; and that Beverly Trucking Co. would utilize the services of applicant from cement mills in Southern California outside of Los Angeles County to Beverly Building Materials Company and would pay applicant 100 percent of the applicable transportation charges for this service. He confirmed applicant's testimony regarding Beverly Trucking Co.'s use of applicant's leased terminal facilities and added that Hargrove furnishes lights and telephone service at the terminal.

Testimony on behalf of protestants was presented by the president of Max Binswanger Trucking. He testified that his company is engaged in the business of hauling cement in Southern California and serves all cement mills in the area; that the company operates 46 units of equipment; that 95 percent of its hauling is cement; and that it could provide service for Beverly Building Materials Company if called upon to do so. He claimed that the granting of the sought permit would have an adverse effect upon previously certificated and permitted cement haulers who have idle equipment and are able to transport any cement that requires movement. He stated that such carriers have many fixed costs that continue when the equipment is idle. It was stipulated that representatives of two additional protesting carriers would have presented similar testimony had they been called upon to do so.

The record establishes that if the sought authority is granted, Beverly Trucking Co. would continue to use the services of applicant's equipment to transport cement under a subhaul arrangement rather than under the lease arrangement that now exists. It is evident that this would pose no competitive threat to any of the protesting carriers or other previously certificated or permitted cement truckers. As to whether applicant would expand his operations

to include additional equipment and subhauling for other cement carriers in the future, as he testified he might do, is speculative and not a sound basis for denying the sought authority. Furthermore, applicant would operate as a subhauler only and would not be personally competing with other carriers for cement hauls.

On the surface, it appears that a relationship exists between Beverly Trucking Co., Beverly Building Materials Company and Western Aggregates, Inc. Applicant, however, is not involved in this relationship, and it need not be considered herein. According to the evidence, he is an employee of Western Aggregates, Inc., only; he has no ownership interest in any of the three companies; and his only connection with Beverly Trucking Co. is through the equipment lease and Beverly Trucking Co.'s use of his terminal facilities.

After consideration the Commission finds that:

1. Applicant possesses the ability and reasonable financial responsibility to initiate the operations as a cement contract carrier herein authorized.
2. The privilege herein granted will not endanger the safety of the public, nor interfere with the public use of the public highways, nor impair the condition or maintenance of said public highways, directly or indirectly.
3. The privilege herein granted will not impair the service of previously certificated cement carriers or permitted cement contract carriers.
4. Applicant is a fit and proper person to receive a permit to operate as a cement contract carrier upon the terms and conditions set forth in the following order.

Based upon the evidence presented and the foregoing findings of fact, the Commission concludes that:

1. Applicant should be granted a permit to operate as a cement contract carrier as set forth in the following order.
2. Applicant's permit should be restricted to subhaul operations.

O R D E R

IT IS ORDERED that the Secretary of the Commission be directed to issue a cement contract carrier permit to Donald R. Hargrove, an individual, doing business as Hargrove Trucking Co. authorizing the transportation of cement as an independent contractor subhauler between all points and places in the Counties of Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara and Ventura, on the one hand, and all points and places in the County of Los Angeles on the other hand.

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

Dated at San Francisco, California, this 19th day of OCTOBER, 1965.

Frederick B. Halaloff
President

George T. Trover

Augustor

William B. Bennett

Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.

This application is similar in some respects to those denied in Decision 68397 (Kenneth D. Francisco et al., Applications

46118 et al., decided Dec. 22, 1964). However, intervening changes in the tariff provisions relating to subhaulers and leasing of equipment (Decision 69557, Case 5440, Pt. 23, decided Aug. 17, 1965) have strengthened our regulation in that respect, and I therefore join in today's decision. George T. Trover