

Decision No. 77306

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the application)
of OLE VIBORG, an individual, dba)
Ole Viborg, of Templeton, Cali-)
fornia, for a permit to operate)
as a dump truck carrier, 50-mile)
radius from point of operation,)
Paso Robles (File No. T-94,455).)

Application No. 51617
(Filed January 5, 1970)

James J. Ashe, for applicant.
John Paul Fischer, for HEC Trucking Cor-
poration, Universal Transport System,
Inc., Asbury Transport Co., CAP
Transport, Construction Materials
Trucking, Inc., McQuilliams Trucking
Morousa Bros. Transportation, and
Rock Transport, Inc.; G. Ralph Grago,
for Associated Independent Owner-
Operators; and E. O. Blackman and
G. Ralph Grago, for California Dump
Truck Owners Association, protestants.
James Diani, for the Commission staff.

O P I N I O N

This application was heard before Examiner O'Leary on March 31 and April 1, 1970 in Paso Robles, California.

This application stems from legislation enacted by the California Legislature which became effective on November 10, 1969, regulating the operation of dump truck equipment on the public highways of this state. The pertinent sections of the Public Utilities Code start with 3610 which declares that dump truck hauling "is a highly specialized type of truck transportation." The applicant herein has no present authority to operate dump trucks and has therefore applied for a new permit under the provisions of Section 3613 of the Public Utilities Code, which provides that applicants for dump truck carrier permits must show by a preponderance of the

evidence that (1) they are fit and proper persons; (2) that they have sufficient operating knowledge and financial ability; and (3) that the privilege sought will not endanger public safety or impair the use of the highways, will not burden the public highways, is necessary to serve the public and will not affect the operation of dump truck carriers who are already in the business. Applicant seeks authority within a 50-mile radius of Paso Robles.

The applicant testified that he has resided at Templeton for five years and has been a grading and paving contractor for three years. He has one full time employee and employs additional persons as needed. Prior to becoming a grading and paving contractor he worked for a Bob Rainey for approximately three years. Mr. Rainey was in the dump truck hauling business. The applicant owns an International 10-wheel dump truck with a rating of 10 to 12 yards. This truck is presently used in his contracting business; however, it is only used about 30 percent of the time. He has had requests from farmers, contractors and the City of Paso Robles to perform dump truck hauling. He has refused such requests because he does not have the authority to perform such transportation. He does not know of anyone in the Paso Robles vicinity who has equipment similar to his. A copy of applicant's financial statement as of January 5, 1970 was received in evidence as Exhibit 1. The exhibit discloses applicant had a net worth of \$80,780.50 as of January 5, 1970 and also discloses applicant had a net profit before taxes of \$35,830.54 during 1969.

Two farmers and a contractor from the Paso Robles area and an employee of the City of Paso Robles testified in support of the application. Both farmers and the contractor testified that on occasion they require the services of a dump truck carrier for small

jobs and have been unsuccessful in obtaining carriers to perform the work required. They also testified that they are not aware of any carriers in the area who would be able to satisfy their needs. The employee of the City of Paso Robles testified that occasionally the city needs to supplement its own fleet of trucks to haul necessary materials for street repair work. The trucks owned by the city are five-yard capacity. Sometimes they find a need for a larger truck similar to the one operated by the applicant.

Three protestants testified and placed documents in evidence. They described the variety of dump truck equipment they have available at all times; their insurance coverage, safety programs and their experience, plus the fact that they consider California to be saturated with dump truck owners and operators. The protestants classified dump truck operations as a highly specialized form of transportation. They emphasized that all operators should be familiar with dump truck tariffs, rates and safety requirements.

The staff recommended that if the application is granted the permit contains a restriction that when subhaulers are engaged by applicant for the transportation of his commodities or commodities of his customers or suppliers, the subhaulers be paid 100 percent of the minimum rate.

Based on the evidence adduced the Commission finds that:

1. Applicant has been a resident of Templeton, California for approximately five years.
2. Applicant is a fit and proper person to receive a permit to operate as a dump truck carrier.
3. Applicant has sufficient operating knowledge and financial ability to initiate and continue the proposed operation.

- 4. The privilege hereinafter granted:
 - a. Will not endanger the safety of the public or interfere with the public use of the public highways or impair the condition of them directly or indirectly.
 - b. Will not unnecessarily burden the public highways.
 - c. Is necessary to serve the public and will not impair the ability of presently permitted dump truck carriers to provide adequate service at the lowest possible reasonable rates.

Based upon the above findings the Commission concludes that the application should be granted as set forth in the ensuing order.

O R D E R

IT IS ORDERED that the Secretary of the Commission shall issue a dump truck carrier permit to Ole Viborg, an individual, authorizing transportation within a 50-mile radius of Paso Robles. Said permit shall be subject to the following restriction:

"Whenever permittee engages other carriers for the transportation of property of Ole Viborg or customers or suppliers of said individual permittee shall not pay such carriers less than 100% 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 3rd day of JUNE 4, 1970.

William J. ...
President

...
Vernon L. Stinson