

Decision No. 77310

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of
DELLA M. VOGEE and WILLIAM GOLUB, a
partnership doing business as V & G
TRUCKING, of San Mateo, California,
for a permit to operate as a dump
truck carrier, 50 mile radius from
point of operation.
(File No. T-94,372)

Application No. 51572
(Filed December 10, 1969)

William Golub and Della Vogee, for themselves.
Raymond A. Greene, Jr., and Jeffrey Howard, for
Universal Transport System, Inc., HEC Trucking
Corporation, Construction Materials Trucking,
Inc., Princeton Equipment Company, CAP Transport,
Inc., Asbury Transportation Company, Morosa Bros.
Transportation Company and Rock Transport, Inc.;
G. Ralph Grago, for Associated Independent Owner-
Operators; E. O. Blackman, for California Dump
Truck Owners Association, protestants.
William T. Meinhold, H. F. Kollmyer, and Arlo D. Poe,
for California Trucking Association, interested party.
H. L. Farmer and James Diani, for the Commission staff.

O P I N I O N

This application was heard before Examiner Fraser on February 5 and 16, 1970 in San Francisco, California.

This application stems from legislation enacted by the California Legislature to become 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 applicants herein have no present authority to operate dump trucks and have therefore applied for a new permit under the provisions of Section 3613 of the Public Utilities Code.

Applicant Golub testified as follows: that applicants want to amend their application to ask only for a permit to haul exclusively for Ralph Rogers as a subhauler. He worked five years as a relief dump truck driver for Rogers, averaging seven or eight hour days and twenty hours a week. He was employed by Rogers because he knew Rogers' sons in high school. About June or July of 1968 he was a passenger in a car involved in a serious accident and was badly injured. He was in the San Mateo Hospital for over a year and was just considered recovered about December 1969. He became acquainted with Mrs. Vogee, who is a nurse, while he was in the hospital and they will soon be married. He has not handled a dump truck since before his accident but his driver's license is still in effect. When working for Rogers he was advised that the driver who owns his own truck can make more money and work on more jobs than those who hire on as the driver of someone else's truck. He and Mrs. Vogee contacted Rogers in November 1969 and the latter promised to provide work for applicants' truck if they obtained a permit. They were to purchase a ten-wheel 1967 Peterbilt dump truck from Rogers after they obtained their permit, but they were delayed and the truck was sold to another. Golub now hopes to purchase a three-axle tractor to pull one of Rogers' trailers, which he will rent for a fee of 20 percent of the gross earned, plus a 5 percent broker fee.

A. 51572 hjh

He stated a driver earns \$5.75 an hour compared to the \$17.31 of the owner-operator. The latter, however, pays all of his expenses, including the purchase price of the truck, out of what he receives per hour. Golub estimated he can break even on twenty hours of work a week. Rogers' trucks have been averaging considerably more than that in hours worked. He testified he has never been cited for a traffic violation while driving and has never been in an accident. Applicant Vogee testified as follows regarding applicants' financial responsibility. The Wells Fargo Bank of Hillsdale, San Mateo County, has promised to loan up to \$15000 on their collateral, which includes a \$42000 home with a mortgage, a 1966 Dodge van, and a motor boat. Applicants have a \$2500 cash reserve and Mrs. Vogee has been working as a nurse at two jobs, at a substantial salary. Rogers has no vehicles for sale at present so they will have to obtain their first truck elsewhere. They have been advised that it may not cost the full \$15000 they can borrow. They will not be purchasing a trailer in the immediate future. All they need to start operating is a tractor. Vogee advised that Golub has no intention of returning to work as a hired driver because the pay is too low. When he hauls again he wants to own his truck. Mrs. Vogee advised she will handle the office and act as a manager and accountant. She also advised they will limit their operation to subhauling for Ralph Rogers.

Ralph A. Rogers testified for the applicants. He has been in construction trucking since 1946 and owns two tractors, four ten-wheel dump trucks and seventeen end-dump semi-trailers. He has six hired drivers for the four ten-wheel trucks and the two tractors. The latter two pull two of his seventeen semi-trailers. The remaining fifteen are pulled by individuals who own their own tractors. He

now has five men who own their own tractors and haul his semi-trailers and are doing well. These five were also friends and classmates of his sons in high school. All five started as employees and witness stated they have now advanced to where each individual owns his truck. He provided no financial help to these five owners and will provide none for Golub. He does have a job for Golub, however, it consists of hauling wet mix whenever it must be moved. Most dump truckers will not haul it because it damages their equipment. Golub will haul some regular loads, also, but he will be loaded last among the owner-operators used by Rogers. Rogers advised a man can make a good living if he drives his own truck but not if he hires another to drive it. Conversely, operators prefer to hire men who own and drive their own trucks. They are more dependable and turn out more work in a shorter period of time. Rogers carries insurance on his trailers and requires the tractor owner to have insurance on the tractor he drives. Rogers has a one million dollar coverage under his policy. He advised that he has found it difficult to hire good men with tractors to pull his semi-trailers. He stated that he cannot guarantee a steady job to anyone but recent experience indicates that plenty of work is available for a good operator.

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, operators and drivers. The protestants classified dump truck operation as a highly specialized form of transportation due to job conditions, pickup sites, off-highway hauling and necessary safety precautions. They emphasized that all operators should be familiar with dump truck tariffs, rates and safety requirements.

Applicants do not qualify under the current statute for a dump truck permit. The only qualification they have is Golub's experience as a driver and he has not operated a truck for 18 months.

Findings and Conclusion

Applicants have failed to prove by a preponderance of the evidence that:

1. They have sufficient operating knowledge and financial ability to operate as a dump truck subhauler exclusively for Ralph A. Rogers.
2. The privilege sought:
 - (a) Will not endanger the safety of the public; or
 - (b) Interfere with public use of the highways or impair the condition or maintenance of them, directly or indirectly;
 - (c) Will not unnecessarily burden the public highways; and
 - (d) 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 on the foregoing findings of fact the Commission concludes that the application should be denied.

O R D E R

IT IS ORDERED that Application No. 51572 is hereby denied.

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

Dated at San Francisco, California, this 3rd
day of JUNE, 1970.

William Symons, Jr.
President
Auger

Thomas J. ...
Vernon L. Struening
Commissioners

Commissioner J. P. Vukasin, Jr., being
necessarily absent, did not participate
in the disposition of this proceeding.