

ORIGINAL

Decision No. 77332

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of EDWARD JAMES NOWOTNY, an individual dba ED NOWOTNY TRUCKING, of Covina, California for a permit to operate as a dump truck carrier, 50 mile radius from point of operations, Covina. (File No. T-94,550)

Application No. 51676
(Filed January 26, 1970)

Edward James Nowotny, for Ed Nowotny Trucking, applicant.
G. Ralph Grago, for Associated Independent Owner-Operators, Inc.; E. O. Blackman--California Dump Truck Owners Association; CAP Transport System, Inc.; McQuilliams Trucking; Morosa Bros. Transportation; H.E.C. Trucking, Inc.; Construction Materials Trucking; and Universal Transport System, Inc. and James R. Foote, for Associated Independent Owner-Operators, Inc., protestants.
James Diani, for the Commission staff.

OPINION AND ORDER

Edward James Nowotny (applicant) an individual doing business as Ed Nowotny Trucking seeks a permit as a dump truck carrier (Article 4.3 of Chapter 1 of Division 2 of the Public Utilities Code).

A public hearing on the application was held before Examiner Rogers in Los Angeles on April 22, 1970. The application was protested by permitted dump truck carriers.

The applicant presented evidence that he has experience as a dump truck operator; that he has a suitable dump truck; that he has the necessary insurance; and that he has the necessary finances.

Section 3613 of the Public Utilities Code provides among other things, that:

"----before a permit to operate as a dump truck carrier is issued the Commission shall require the applicant to establish by a preponderance of evidence:

- A. ----
- B. ----
- C. that the privilege sought;
 - 1. ----
 - 2. ----
 - 3. is necessary to serve the public ---."

The applicant failed to produce any evidence by any shipper of need for his services^{1/}. The hearing was continued to May 5, 1970 to permit applicant to prove the public need for his services.

On April 29, 1970 the applicant requested that the matter be submitted on the record.

1/ Actually applicant presented evidence that he had been operating as a dump truck carrier without a permit and that he was paying the employing carrier (John Barnwell Trucking) 10 percent of his gross revenues. This is unlawful and additionally such payments are in violation of Item 94 of MRT No. 7.

The matter having been submitted and the applicant having failed to produce any evidence that his service "Is necessary to serve the public ---",

IT IS ORDERED that the application is denied.

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

Dated at San Francisco, California, this 9th day of JUNE, 1970.

William Augustus G.
President

Augusta
J. J. [unclear]

[unclear]

James L. Stinson
Commissioners