

Decision No. 77742

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 BILLY H. HOLLINGSWORTH, an individual,)
 dba HOLLINGSWORTH TRUCKING, of Los)
 Angeles, California, for a permit to)
 operate as a dump truck carrier, 50)
 mile radius from point of operation,)
 Los Angeles. (File No. T-94,431))

Application No. 51613
 (Filed December 29, 1969)

Silverton and Silverton, by Samuel L. Sosna, Jr., for applicant.
C. W. Burke, for Engineering and Grading Contractors Association, Inc., interested party.
Virian Booze, for Booze Trucking, E. O. Blackman, for California Dump Truck Owners Association, and Associated Independent Owner Operators, Inc., CAP Transport, Rock Transport., Universal Transport System, Inc., McQuilliams Trucking, Morosa Bros. Transportation, HEC Trucking Corporation, Construction Materials Trucking, Inc., and Daniel Feins, for Western Conference of Teamsters, protestants.
James Diani, for the Commission staff.

O P I N I O N

Billy H. Hollingsworth, doing business as Hollingsworth Trucking, requests a permit to operate as a dump truck carrier within a 50-mile radius of Los Angeles.

A public hearing was held before Examiner DeWolf on April 14, June 11, and 12 at Los Angeles, and the matter was submitted on June 12, 1970 subject to written argument and briefs which have been filed by applicant and E. O. Blackman for protestants.

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 requires the applicant to establish certain facts by a preponderance of evidence.

Applicant Hollingsworth amended his application to ask only for a permit within a 50-mile radius of Los Angeles. In March of 1969, prior to Section 3613, applicant purchased a dump truck in preparation for applying for a permit to operate. Applicant listed assets as of December 24, 1969 valued at \$6,400 and liabilities of \$400. Applicant Hollingsworth testified that since filing this application he sold the 1956 G.M.C. dump truck and has purchased a 1960 International dump with which to operate. As to knowledge and experience, the applicant testified that he has had eight years experience in heavy-duty truck driving, was with the Seabees from 1952 to 1957 where he operated graders and dumps, and after two years made second class. He has also worked as a dump truck operator for the County of Los Angeles. Applicant testified that he has been promised work for his dump truck through a J. K. Barker, broker, and that he has contacts with the County of Los Angeles which will give him dump truck hauling when and if the county fleet is overloaded. Applicant testified that he has another party in Gardena who will give him work, that he has a mechanic available to care

for his truck, and that he has been a member of the Teamsters' Union for eight years. Applicant further testified that his dump truck is in good condition and has been inspected by his mechanic; that his operations under a permit, if issued, will not burden the highways or impair the ability of present carriers to provide adequate service at the lowest possible reasonable rates.

Applicant was cross-examined by Mr. Blackman of CDTOA, who ascertained that applicant was not familiar with such terms as "shipper", "overlying carrier", "underlying carrier", the various types of dump truck rates, credit rules, or shipping documents required under the C.P.U.C. tariffs.

Applicant expressed his anticipation to work for brokers at \$15.00 an hour and to gross \$2,000 per month for nine months of the year.

On the issue of the necessity of public service, applicant testified that he had asked nine or ten brokers for work, and that he expected to get work from them.

The recently enacted law for new dump truck permits includes in Section 3613:

"Except as provided in Section 3612, 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) That he is a fit and proper person to receive a permit to operate as a dump truck carrier.

"(b) That he has sufficient operating knowledge and financial ability to initiate and continue the proposed operation.

"(c) That the privilege sought:

"(1) Will not endanger the safety of the public or interfere with the public use of the public highways or impair the condition or maintenance of them, directly or indirectly.

"(2) Will not unnecessarily burden the public highways.

"(3) 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."

At the outset of the hearing Mr. Diani, representing the staff, commented on the number of permits issued since the effective date (November, 1969) of Section 3612(b) which provides for the filing of grandfather rights for dump truck carriers. The Commission has received 6,476 such applications, and through April 10, 1970 has issued 3,830 of those grandfather rights.

Ray David Rhodes of Mountain View, California, General Manager of a protestant, H.E.C. Trucking Corporation, which owns 31 units of dump truck equipment and serves as a broker, testified that he had worked for the passage of the legislation which resulted in Code Section 3613, the purpose of which was to stabilize the dump truck industry by limiting the field of entry. He stated there were sufficient truckers now in the field and only the best qualified should be admitted, and only after the showing of a need. This is an effort to eliminate the turnover of the unqualified carriers for their own protection, for the benefit of the present permittees, and for the industry. The applicant must prove by the preponderance of evidence that his permit will not impair the ability of presently permitted dump truck carriers to provide adequate service at the lowest possible reasonable rates. He further stated he has no need at present for additional haulers; that he cannot keep his regular haulers busy though he seeks business statewide.

Virian Booze, for protestant Booze Trucking of Berkeley, testified that he is an independent trucker who does dump truck work statewide. He testified that he was a protestant because granting

of the application would amount to jeopardizing his own permit and his welfare. He operated in the southern area last year for nine weeks. In the last thirty days he has had five days of work. While testifying in this case he refused work at Grapevine which was offered as there was not enough money in it to pay expenses. He was asked how he would be hurt if applicant took the work that he refused and he replied, in effect, that if he, as an experienced operator, could not make expenses on the haul he did not know how the applicant could.

Protestant witness Walker Brown of Baldwin Park, southern California, testified that he operates bottom dumps, semis, and end dumps in the Los Angeles area, San Fernando Valley and Orange County. He was in the business from 1946 to 1948 and again since 1952. He operates approximately fifty dump truck units as a broker and overlying carrier. He testified that there has been no shortage of dump truck carriers in the Los Angeles area in the last six months and does not believe more dump truck permits are justified. If more are granted, it would adversely affect the present permittees who are struggling to keep busy.

Charles Stevens, called by protestants, testified that he is Chairman of the construction chapter of the California Dump Truck Owners Association and resides in West Covina. He is an owner-operator of a dump truck. His chapter consists of dump dirt haulers. He testified that this business has been very bad during the past six months and he has been getting out only two or three days a week.

Robert J. Anderson, called for the protestants, testified that he lived in Burbank and was Vice President of Dispatch Trucking,

which was in the dump truck business long before 1959 when he joined them. Dispatch Trucking operates in southern California and is an overlying carrier-broker. In the past six months there has been no shortage of dump trucks. They have a yard full of trucks and it has been that way virtually the entire calendar year. Out of a fleet of twenty-five units, more than 50 percent are not working. He continually gets calls from outside people looking for work but very little has been available. If applicant is given a permit he stated it will adversely affect the outside people who work for protestants.

E. O. Blackman, Monterey Park, testified that he has been General Manager of the California Dump Truck Owners Association since 1941. He was instructed by the Directors of CDTOA to resist all applications for new dump truck permits because there is already an adequate supply in California. A surplus reduces the use factor of the individual vehicle. This in turn tends to result in an increase in the minimum rates because such rates are predicated on a living revenue for the industry.

At present there are 6,500 dump truck carrier permits in force, and 12,000 units of dump truck equipment are operated. There is no shortage of dump truck units available for hire in California. He claimed applicant was in error in stating that the minimum rate for a 3-axle or 10-wheel dump truck is \$15.00 an hour. It is \$13.00 per hour. The net to him would be 95 percent of \$13.00 per hour.

The testimony of Edward Allen, President of Heidelbaugh Trucking Company, Inc., gave further support to the position of protestants, and may be considered cumulative.

Based on the evidence, the Commission finds:

Applicant Hollingsworth has not established by a preponderance of evidence pursuant to Section 3613(3) of the Public Utilities Code that the service he offers 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.

Because of this finding, further findings are unnecessary. The application must be denied.

O R D E R

IT IS ORDERED that Application No. 51613 is denied.

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

Dated at San Francisco, California, this 22nd day of SEPTEMBER, 1970.

J. P. [Signature]
Chairman

[Signature]

Vernon L. Sturgeon
Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.