

ORIGINAL

Decision No. 77985

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of)
GERALD A. LOPEZ, an individual dba)
G. A. LOPEZ TRUCKING, of Orange,)
California, for a permit to operate)
as a dump truck carrier, 100 mile)
radius from point of operation,)
Orange. (File No. T-84,205))

Application No. 51614
(Filed January 2, 1970)

Tom Pavone, for applicant.
E. O. Blackman, for California Dump Truck
Owners Association, Universal Transport
Systems and HEC Trucking; G. Ralph Grago
by E. O. Blackman, for Associated Inde-
pendent Owner Operators, protestants.
James Diani, for the Commission staff.

O P I N I O N

Gerald A. Lopez, doing business as G. A. Lopez Trucking,
requests a permit to operate as a dump truck carrier within a
100-mile radius of Orange, California.

A public hearing was held before Examiner DeWolf on May
19, and June 30, 1970 at Los Angeles and the matter was submitted
on June 30.

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 applicant herein has 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. Prior to the effective date of November 10, 1969 the Commission issued many "grandfather" rights to existing dump truck permit holders.

Applicant Lopez held an effective permit (File No. T-84,205) to operate as a dump truck carrier from July of 1966 to April 1, 1969 when his permit was canceled for lapse of his insurance coverage. Applicant testified that since said time he has been employed as a driver by Charles Manly of Orange, California who last year requested him to file an application for a permit and that he contacted the Commission to reinstate his permit authority. He then obtained an insurance binder which was effective December 12, 1969. Applicant testified that his insurance expired from this one company and he did not renew it, but that he was in the process of rewriting it with another company and was changing over the insurance and trying to get it. Applicant also testified that his gross revenue was about \$24,000 in 1968 and about the same in 1969.

Applicant testified that he formerly operated the three pieces of equipment listed in the application as 1966 model trucks, he has total assets of \$28,000 with no liabilities, this includes shop equipment and a pickup truck, and he expects to use this equipment in the proposed operations. Applicant testified that he is not affiliated by common ownership, control or management with any carriers or shippers, his

equipment is in good condition, he has the facilities to maintain it, and he has had no traffic citations for moving violations in recent years.

Applicant further testified that he has arrangements with Charles Manly of Orange to work his equipment in that vicinity full time and that Charles Manly has 12 trucks plus 16 or 20 sets of trailers which he operates in Orange and vicinity. Applicant stated that he has been promised work the year round, weather permitting.

Applicant testified that his equipment will not endanger the safety of the public nor interfere with its use of the public highways or impair their condition and that his proposed operations in Orange County are necessary to serve the public and will not impair the ability of other presently permitted dump truck carriers to provide adequate service at the lowest possible reasonable rates.

Applicant testified that he has worked for Charles Manly both as a driver and a dispatcher in dump truck operations. He stated that he has first-hand knowledge of the needs of the dump truck industry in Orange County and that last year there were shortages of trucks when Manly could not get the number needed and that issuance of a permit to him will help alleviate this situation.

One witness testified for applicant, stating that he is a management consultant and familiar with the dump truck industry and its requirements. He stated that usually there is a shortage of dump trucks from March to December, but that this year has been unusual due to a shortage of money caused by the high interest rates, but that this condition is beginning to change and when business turns up further shortages can be expected.

One witness testified for protestants that there are 6,500 permittees who operate 11,000 units in California, that the average use factor is 1,850 hours per year, which is low and should be not less than 2,080 hours per year, and that this business is seasonal which involves more work in the summer and fall than in the winter and spring. The witness testified that 1969 was an extremely unusual year with heavy rains and much extra work and many of the present operators can acquire extra equipment when needed and that there is no shortage of trucks, but an oversupply of dump truck equipment, much of which is idle. The witness testified he is manager of an association which has 60 of the large overlying carriers as its members, there being about 80 to 120 overlying carriers altogether and 6,500 subhaulers.

At the beginning of 1969 applicant had a radial highway common carrier permit as a dump truck operator which lapsed on April 1, 1969. Applicant testified that he was thereafter and during said time seeking insurance to reinstate the permit, and did secure and file the insurance on December 12, 1969. If the insurance had been available and filed on November 10, 1969

applicant's permit would have been reinstated. If the permit had been reinstated applicant would have been entitled to a dump truck carrier permit in accordance with the "grandfather" provisions of Section 3612 of the Public Utilities Code. However, applicant's insurance company, through no fault of applicant, did not file with the Commission the insurance it had written for him until after November 10, 1969, the effective date of Section 3612.

A Commission staff representative appeared and examined witnesses, but took no position for or against the applicant. The Commission representative stated that the records of the Commission show that applicant is behind in filing his reports for 1968 and 1969 and that he has not paid fees for the fourth quarter of 1968 and the first quarter of 1969 and nothing to the contrary was shown. Applicant will be required to file the reports due under the previous permit, File T-84,205, to date and pay the fees due for the fourth quarter of 1968 and the first quarter of 1969 prior to issuance of the permit granted herein.

Upon consideration of the evidence the Commission finds as follows:

1. Applicant has established by a preponderance of the evidence all of the facts required by Section 3613 of the California Public Utilities Code for issuance of a permit to operate as a dump truck carrier.
2. Applicant has been a resident of Orange, California, and an operator of dump trucks in excess of four years.
3. Applicant is a fit and proper person to receive a permit to operate as a dump truck carrier.

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4. Applicant has sufficient operating knowledge and financial ability to initiate and continue the proposed operation.

5. 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 is directed to issue Gerald A. Lopez, an individual, doing business as G. A. Lopez Trucking a permit to operate as a dump truck carrier within a radius of 100 miles of the City of Orange, California, and said permit is to be issued only when applicant has filed the past due reports and paid the delinquent fees for the last quarter of 1968 and the first quarter of 1969, under File No. T-84,205. Said permit shall be subject to the following restriction:

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Whenever permittee engages other carriers for the transportation of property of Gerald A. Lopez 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 24th day of NOVEMBER, 1970.

J. B. ... Chairman
William ...
John ... Commissioners

*I will file
a dissent.
Argued:
I dissent
Vernon L. Sturgeon*

COMMISSIONER A. W. GATOV, Dissenting:

I dissent.

Under the very clear language of Section 3613 of the Public Utilities Code, an applicant for a dump truck carrier permit must establish by a preponderance of evidence that he is (a) 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, and (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. The legislative intent is that new entries in this phase of transportation should be severely limited.

The applicant has not established that the permit sought is necessary to serve the public, that it will not impair the ability of presently permitted dump truck carriers to provide adequate service at the lowest possible reasonable rates, and the application, therefore, should have been denied.



Commissioner

Dated at San Francisco, California,
November 24, 1970.