

ORIGINAL

Decision No. 81944

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of HARRY CLIFFORD  
BURROWS, Jr., dba BURROWS TRUCK-  
ING, for a (grandfather) permit  
as a dump truck carrier, Los  
Angeles.

Application No. 54011  
(Filed May 3, 1973)

H. Clifford Burrows, Jr., for  
Burrows Trucking, applicant.  
E. O. Blackman, for California  
Dump Truck Owners Association,  
interested party.  
T. H. Peceimer, for the Commission  
staff.

OPINION AND ORDER

Applicant Harry Clifford Burrows, Jr., doing business as Burrows Trucking, requests the issuance to him of a permit under Section 3612 of the Public Utilities Code to operate as a dump truck carrier between all points in the state. Because of the unusual circumstances involved the matter was set for hearing which took place in Los Angeles on August 10, 1973 before Examiner Pilling. The case was submitted on that date. The application was noticed in the Commission's Daily Calendar of May 7, 1973 and a notice of hearing was mailed to the Highway Carriers Association, California Dump Truck Owners Association, the California Manufacturers Association, and the California Trucking Association. A representative of the California Dump Truck Owners Association and a representative of the Commission's staff entered appearances at the hearing.

Effective November 10, 1969 the Public Utilities Code was amended by the addition of Sections 3610 to 3615 which required that thenceforth specific authorization under those sections was required to engage in the operations as a dump truck carrier. Previously

permitted dump truck operations were authorized in connection with the radial highway common carrier permit and highway contract carrier permit sections of that code. The amendments contained a "grandfather" provision whereby permits under the new code sections would be issued to persons whose radial and contract permits qualified them as dump truck operators as of November 10, 1969. However, to obtain a "grandfather" permit, Section 3612 required that an application for such permit be filed prior to a date extended to March 16, 1970.

Applicant testified that he had engaged in dump truck operations between 1964 and August of 1969 under a radial highway common carrier permit which was cancelled in August, 1969. Applicant testified that on November 10, 1969 he applied for and received a radial highway common carrier permit which authorized him to operate as a dump truck carrier for the expressed purpose of qualifying to receive "grandfather" authority under the new code section for he intended to reinstitute his dump truck operations. This purpose was stated to a member of the Commission's staff who took applicant's hand-filed application but it elicited no caveat in response that further action on the part of applicant was necessary to secure "grandfather" authority. After receiving his radial permit on November 10, 1969 he testified he did reinstitute his dump truck operations but perceived that he was required to do nothing further to perfect his dump truck authority and that he has continued his dump truck operations until recently when the Commission's staff required him to discontinue such operations for lack of a permit under the new code sections. Applicant testified that he had received no notice from the Commission between and including November 10, 1969 and March 16, 1970 allegedly sent out by the Commission to all qualified persons notifying them of the requirement that they must file a "grandfather" application as a condition to receiving a permit under the new section, nor did he otherwise receive any such notice. Applicant did not file a "grandfather" application.

Applicant testified that he paid his dump truck carrier fees for the years 1970, 1971, 1972, and 1973 and that failure to issue him the requested permit will result in applicant's virtual loss of livelihood. Applicant points out that issuing him the permit can have no detrimental effect on other dump truck carriers as might be the case if applicant was a newcomer to the field. Applicant testified that he has but one dump truck which he drives himself and that a large part of the hauls are in connection with a small contracting business which he operates.

The representative of the California Dump Truck Owners Association offered no objection to the issuance of the requested permit but suggested that the permit be restricted against the use of subhaulers because of the complicating factor of applicant's allied contracting business. Applicant agreed to such a restriction.

The representative of the Commission's staff stated that a timely mass mailing was made by the Commission on two separate occasions to permit holders whose permits qualified them to receive "grandfather" dump truck permits notifying them of the change in the law and the requirement for filing a "grandfather" application should they choose to receive a "grandfather" dump truck permit and that applicant, whose permit qualified him for the new permit, would have been one to whom such notices would have been mailed. However, the staff offered no objection to the issuance of a permit to applicant.

Upon consideration the Commission finds that applicant was engaged in the business of a dump truck carrier on November 10, 1969; that on that date applicant qualified as a "grandfather" dump truck carrier for the express purpose of continuing operations as a dump truck carrier under Section 3612 on and after that date; that applicant has been in continuous operations on and after such date until recently when his operations were questioned by the Commission's staff; that granting applicant a dump truck carrier permit will not impair the ability of presently permitted dump truck carriers to

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provide adequate service to the public at the lowest possible rates; that applicant should be granted a dump truck carrier permit in the usual form but restricted against the use of subhaulers.

IT IS ORDERED that upon payment of the fee set out in Section 3612(b) of the Public Utilities Code, and after meeting the insurance and other commission ministerial requirements necessary before a permit issues, applicant be issued a dump truck carrier permit in the usual form but containing a restriction against the use of subhaulers.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this

2nd day of OCTOBER, 1973.

William J. Lyons President

[Signature]  
[Signature] Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

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