

ORIGINAL

Decision No. 82291

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of HAROLD HOLTZINGER,
etc. For Issuance of A Dump Truck
Carrier Permit.

Application No. 53516
(Filed August 10, 1972;
amended June 12, 1973)

Robert L. Thurmond, Attorney at Law, for applicant.
G. Ralph Grago, by James R. Foote, for Associated
Independent Owner-Operators, Inc., interested
party.
Harold Lane and Frank A. Marx, for the Commission
staff.

O P I N I O N

Harold Holtzinger, doing business as Holtzinger Brothers
Excavating, Grading & Paving Co., by amendment filed June 12, 1973
changing his name to Holtzinger Bros. Grading & Paving Co., Inc.,
requests a permit authorizing operations as a dump truck carrier
pursuant to the provisions of Section 3612(b) of the Public Utilities
Code.

A public hearing was held before Examiner Porter on
January 15 and June 18, 1973 at San Francisco at which time the
matter was submitted.

In 1969 the California Legislature amended the Public
Utilities Code, effective as of November 10, 1969, establishing a
new class of carrier designated as a "dump truck carrier." Section
3612(b) of the Code contains a grandfather clause providing as
follows:

"Any dump truck carrier engaged in business as such
on the effective date of this section shall file
with the Commission prior to March 16, 1970, an
application for a permit to operate as a dump truck
carrier; provided, that in lieu of all other fees
required by law, the applicant shall pay a fee of
twenty-five dollars (\$25). The Commission shall issue
such permit authorizing operation within the area requested
in the application without further proceedings."

The Commission staff introduced evidence that applicant was contacted prior to March 16, 1970 concerning compliance with the dump truck carrier grandfather statute. A letter requesting grandfather rights dated March 18, 1970 in an envelope postmarked March 18, 1970, addressed to the Public Utilities Commission, was marked as an exhibit. The applicant seeks to explain the delay of notice to the Public Utilities Commission on failure of service by the United States postal service.

After consideration the Commission finds that applicant had notice of the 1969 legislation and the procedure to be followed with respect to the acquisition of the requested permit, and that the date of the letter, together with the postmark date on the envelope, shows the notice to be late.

Therefore, the Commission concludes that the application, not being filed within the prescribed time, must be denied. There is no statutory provision for granting grandfather authority retroactively.

O R D E R

IT IS ORDERED that Application No. 53516, as amended, is denied.

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

Dated at San Francisco, California, this 3rd day of JANUARY, 1974.

William L. Stearns
President
William Symon

[Signature]
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Commissioners