

ORIGINAL

Decision No. 82831

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
EARL W. HUDSON, doing business as
HUDSON TRUCKING, for a certificate
of public convenience and necessity
to extend cement carrier service.

Application No. 54080
(Filed June 4, 1973)

Silver, Rosen, Fischer & Stecher, by John Paul
Fischer and Michael J. Stecher, Attorneys at
Law, for Earl W. Hudson, applicant.

Handler, Baker & Greene, by William D. Taylor,
Attorney at Law, for Applegate Drayage Company;
and Chris Gertz, for Customer Truck Service,
Chub Nunnemaker Trucking, and Joe Costa Trucking,
protestants.

T. H. Peceimer, for the Commission staff.

O P I N I O N

By this application Earl W. Hudson, doing business as Hudson Trucking, requests a certificate of public convenience and necessity to extend service as a cement carrier to and within the counties of Alpine, Calaveras, Humboldt, Mariposa, Monterey, San Benito, Santa Cruz, Sutter, Trinity, and Yolo. Applicant is presently authorized to serve, as a cement carrier, 23 central and northern California counties which lie generally north of the counties of Inyo, Tulare, and Kings. Hearing on the application was held on December 17, 1973 and January 21, 1974 at San Francisco before Examiner Pilling. At the hearing testimony was offered by applicant and five supporting witnesses and by protestant Applegate Drayage Company (Applegate).

Applicant testified that he has specialized in the hauling of cement since 1942; that his equipment consists of five dual-drive heavy duty tractors and six pneumatic bulk cement semitrailers and one flatbed semitrailer (no doubles equipment), all of which are paid for and owned by him; that as of September 30, 1973 he had a net worth of \$168,650; and that he currently employs seven persons and has his main terminal, yard, and shop facilities at Stockton. Applicant testified that from his knowledge his competitors' fleets consist of practically all 20-foot bulk trailers hauled in tandem by single-axle drive tractors which lack the transmission power on steep grades in mountainous terrain and the backing ability of tractor and semitrailer equipment which are necessary in undertaking many hauling jobs. His competitors' fleets each have at the most one bulk semitrailer with dual-axle drive tractor.

The owner of Hendlay Sand and Gravel testified in support of the application, primarily for service to Mariposa County. He stated that he has a portable readymix concrete plant located at Buck Meadows on Highway 120 in Mariposa County and one located in Tuolumne County; that he normally bids jobs in both of those counties; that he purchases his dry cement from Permanente in Santa Clara County; that during the months of October through April dual-drive equipment is required to negotiate the 20 miles of steep, hilly terrain to get to the Buck Meadows' batch plant; that during some winters there is a large demand for readymix concrete such as for work in Yosemite National Park, which spans the Mariposa-Tuolumne County border, where the work is done during the winter because it is not a tourist season; that he uses his Buck Meadows' plant to service the jobs he gets in Yosemite; that a percent of the deliveries of dry cement to him require dual-drive equipment to get to the unloading site; that he has requested the shipper to use applicant's service on these moves; that applicant has delivered between six and eight loads of dry cement to his Buck

Meadows' batch plant which has a storage capacity of two truckloads; that he uses between 80 and 100 loads of dry cement a year for his jobs; that he has a job at White Wolf in Yosemite National Park next spring at an elevation of 8,500 feet and will require 1,500 yards of concrete; and that he is sometimes forced to use bagged cement on some jobs. The witness testified that applicant has given him good service to Tuolumne County and that he wants applicant's service to adjacent Mariposa County.

The president of Les Calkins Trucking, Inc. testified that his company supported the application for Humboldt, Monterey, Yolo, Trinity, and Sutter Counties even though his company has cement authority to serve these counties. His company's primary business is operating dump trucks. His company's support is premised on the need to engage a subhauler with a fleet of more than one or two pneumatic semitrailers, and to the witness's knowledge applicant is the only carrier with such a fleet. His company bids the complete dump truck hauling, including the cement hauling, at construction sites and at times does not know where the batch plant and storage facilities are to be located until construction has begun. Where, because of terrain or weather or other conditions, his company is unable to use its own bulk cement doubles trailers and semitrailers are required, he leases a fleet of semitrailers from applicant. He would prefer to use applicant under a subhaul arrangement for serving the counties he supports, just as he has done in counties where both of them have cement authority, as a lease arrangement is too cumbersome.

A vice president for State-Wide Concrete, Incorporated (Statewide), a cement contractor, testified that his company bids jobs throughout the northern half of California, specifically in Sutter, Yolo, Calaveras, Alpine, Trinity, and Humboldt Counties and that 99 percent of the jobs it bids require the use of pneumatic bulk semitrailer equipment either to pick up a load of cement or to

deliver it. Statewide has a stationary batch plant located at Santa Rosa where the batching operations are shut down when storage delivery is taken with doubles equipment but need not be shut down when storage delivery is made with semitrailers. It operates two portable batch plants which must be located as close as possible to the pouring point in order to conserve truck fuel and to utilize the minimum number of trucks on the job to haul the wet cement. The location of the portable batch plant and storage facilities is often in mountainous terrain at inaccessible points. The portable silos it uses were described by the witness as consisting of eight sheets of plywood placed on the ground to form a rectangle with one side left open through which a trailer must be backed in for unloading the cement on the ground. Since the top of the silo is open the cement must be slowly hosed on the ground to minimize the dust. Applicant's equipment can do this but bottom dump trucks which unload the dry cement in typical fashion cannot. The witness testified that Statewide uses applicant for the majority of Statewide's hauls. The witness stated that his company must have the services of two or three semitrailers at a time, because of the time factors involved, in order to make large pours; the round-robin use of a single trailer between the supply point and the job storage point lengthens the time of pouring and increases costs.

The manager of the California division of Nevada Cement Company, which ships cement from Sacramento, testified that his company supported the application primarily to insure that it will have sufficient trucks available to it during the peak summer shipping months to adequately service a job in Humboldt County to which it is selling, and secondarily because of applicant's large fleet of semitrailers. The witness testified that his company favors Les Calkins Trucking, Inc. with most of its hauls. The witness's company supports the application on service to Humboldt, Yolo, Calaveras, Sutter, and Alpine Counties to which it expects to ship 400 to 500 loads of bulk cement in 1974.

The assistant traffic manager of Flintkote Company, Calaveras Cement Division (Flintkote), testified that his company requested applicant to file this application. Flintkote manufactures and sells cement. It has plants located close to Redding and at San Andreas and a terminal at Union City. It ships cement from all three points and sells and ships cement to Calaveras, Alpine, Sutter, Yolo, Humboldt, and Trinity Counties and expects to ship over 1,500 truckloads of cement to such counties during 1974. Flintkote supports the application because of its need for more for-hire bulk cement trucks during the peak summer months when it experiences a shortage of such trucks and because it feels it is losing business because of a lack of bulk cement semitrailers available to it. The witness stated that when his company needs pneumatic bulk semitrailer equipment the need is usually for 4, 5, and sometimes 10 to 20 pieces of that equipment. The witness stated that his company loses control over a job and coordination is impossible if he has to secure semitrailers from five or six different companies. During 1973 Flintkote had shipments to Calaveras, Alpine, Sutter, Trinity, and Yolo Counties which required the use of bulk pneumatic semitrailers that were secured from a number of different carriers. Eighty percent of the loads were delivered late, including those handled by protestant Applegate who on one load to a point on the border of Stanislaus and Calaveras Counties attempted to make delivery with doubles trailers and a single-axle drive tractor, but could not make the grade and had to reload the cement in a semitrailer which caused the shipment to be two days late in delivery. Flintkote presently uses applicant's service to the counties where applicant has authority and finds it satisfactory, and it would use applicant's service into the 10 requested counties if the application is granted.

Protestant Applegate is certificated as a cement carrier to serve between points in 48 counties, including those applicant is authorized to serve and those applicant is applying to serve, except the counties of Alpine, Mariposa, and Trinity. Applegate owns and operates five sets of pneumatic bulk doubles equipment, one 40-foot pneumatic bulk semitrailer and dual-drive tractor, six sets of flat rack doubles equipment, and one 40-foot flat semitrailer and dual-drive tractor. The witness for Applegate testified that his company was in a position to secure more equipment if it was necessary due to increased business. The witness testified that Applegate has been engaged in hauling cement in bulk since 1945 and that during the last few years his company's revenue from hauling sack and bulk cement decreased from a total of \$243,095 in 1971 to \$161,725 in 1973 due primarily to the near completion of the federal interstate highway system within California. He anticipates his company's revenue from hauling sack and bulk cement in 1974 will be approximately \$145,000. The witness also estimated that his bulk equipment had a utilization factor of 52 percent and his flatbed equipment 17 percent for the 11 months through November 30, 1973. He attributes part of the decrease in his business to the fact that many cement companies own cement carriers which are used instead of independent for-hire carriers. His company employs between 23 and 27 drivers. Between October and November of 1973 Applegate had five sets of its doubles hauling for Calaveras Cement Company, a supporting shipper, to a job site north of Redding. When necessary to make delivery his company will detach the trailing unit from a set of doubles, pull the front unit to the delivery point, unload and then return the empty unit to the location of the detached loaded unit, fill the empty from the loaded unit, and then make delivery of the remainder of the shipment. The witness contends that there is an excess of cement carriers who are authorized to serve the counties requested in the application and feels that in view

of the relatively rural nature of the counties involved, there are too many authorized carriers for the potential volume of cement traffic that would be required in those counties. The witness stated that his company holds itself out to serve all counties it is authorized to serve. He testified that his company bought its pneumatic semitrailer in 1971 because of an anticipated need for such equipment but to date has found only one shipper - a shipper of clay - that has any use for it. The semitrailer is used because equipment must back up approximately 200 feet between two buildings which are 12 to 14 feet apart in order to effect delivery of the clay. Applegate's doubles trailers have a 2,000-pound greater payload than a semitrailer.

Findings

1. Applicant specializes in transporting cement in bulk in pneumatic semitrailers pulled by dual-drive tractors and has equipped himself with six such trailers and five such tractors.

2. The type of equipment operated by applicant is required for the efficient delivery of bulk cement at many job sites located in mountainous terrain because of the steep grades and weather conditions involved, and at many pickup or delivery points where backing into the pickup or delivery point is required to effect service.

3. Single-drive tractors pulling doubles trailers in tandem often lack transmission power and backing ability to efficiently serve the points described in paragraph 2.

4. Applicant is fit, willing, and able to conduct the proposed operations.

5. Applicant has sufficient operating and financial ability to initiate and continue the proposed service.

6. No single cement carrier, other than the applicant, is able to provide sufficient equipment of the type needed to satisfy the requirements of a shipper, and efficiency is lost when the shipper is required to engage several cement carriers to work on a job.

7. Supporting witnesses, who ship from facilities requiring semitrailers or who receive at points requiring semitrailers, have shown a need, rather than a mere desire, to have available to them a fleet of pneumatic bulk cement semitrailers pulled by dual-drive heavy duty tractors for hauling bulk cement to and between points in Mariposa, Calaveras, Alpine, Sutter, Yolo, Trinity, and Humboldt Counties.

8. The special need found in paragraph 6 is not eclipsed by the abundance of cement carriers who operate primarily double equipment, but the authority granted herein should be restricted to the transportation of shipments in pneumatic bulk cement semitrailers pulled by dual-drive heavy duty tractors.

9. To the extent of the certificate granted herein, the ability of presently certificated cement carriers or permitted cement contract carriers to provide or to continue to provide adequate services as such, at the lowest possible reasonable rates, will not be impaired.

10. Public convenience and necessity require the granting of the application between the points set out in paragraph 7.

11. The long term effects on man's environment are negligible and there is no viable alternative to the transportation service proposed.

12. No need has been shown to exist for service to or from or between the counties of San Benito, Santa Cruz, or Monterey.

Conclusion

Applicant should be issued a certificate to operate as a cement carrier as set out in the ensuing order. This authority will be in addition to the cement carrier authority he now holds.

Applicant is placed on notice that operative rights, as such do not constitute a class of property which may be capitalized

or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Earl W. Hudson, authorizing him to operate as a cement carrier, as defined in Section 214.1 of the Public Utilities Code, subject to certain conditions, between the points set forth in Appendix A attached hereto and made a part hereof.
2. In providing service pursuant to the authority granted by this order, applicant shall comply with the following service regulations. Failure so to do may result in a cancellation of the authority.
 - a. Within thirty days after the effective date of this order, applicant shall file a written acceptance of the certificate granted. Applicant is placed on notice that, if he accepts the certificate he will be required, among other things, to comply with the safety rules of the California Highway Patrol and insurance requirements of the Commission's General Order No. 100-Series.
 - b. Within one hundred twenty days after the effective date of this order, applicant shall establish the authorized service and file tariffs, in triplicate, in the Commission's office.
 - c. The tariff filings shall be made effective not earlier than thirty days after the effective date of this order, on not less than thirty days' notice to the Commission and to the public, and the effective date of the tariff filings shall be concurrent with the establishment of the authorized service.

- d. The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 117-Series.
- e. Applicant shall maintain his accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of his operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.
- f. Applicant shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If applicant elects not to transport collect on delivery shipments, he shall make the appropriate tariff filings as required by the General Order.

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

Dated at Los Angeles, California, this 7th day of MAY, 1974.

William Brown 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.

Appendix A

Earl W. Hudson
(an individual)
doing business as
HUDSON TRUCKING

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Earl W. Hudson, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to conduct operation as a cement carrier as defined in Section 214.1 of the Public Utilities Code, from any and all points of origin to all points and places within the counties of Alpine, Calaveras, Humboldt, Mariposa, Sutter, Trinity and Yolo, subject to the restrictions shown below:

1. Shipments shall be transported in pneumatic bulk cement semitrailers pulled by dual-drive heavy duty tractors.
2. This certificate of public convenience and necessity shall lapse and terminate if not exercised for a period of one year.

Issued by California Public Utilities Commission.

Decision No. 82831, Application No. 54080.