

Decision 90 03 065 MAR 28 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
John H. Begg dba J & B Trucking for)
a Cement Contract Carrier Permit to)
operate in San Luis Obispo,)
Santa Barbara, Ventura, Kern, and)
San Bernardino Counties.)

Application 89-11-001
(Filed Nov. 2, 1989;
amended January 22, 1990)

ORIGINAL

O P I N I O N

J & B Trucking (J&B) is a California limited partnership comprised of the following:

<u>Name</u>	<u>Type of Partner</u>	<u>Partnership Interest</u>
John H. Begg	General	50%
James R. Bottroff and Carolyn Bottroff, husband and wife, as community property	Limited	48%
Richard Hoover, Trustee of following trusts:		
1. Elizabeth Irene Bottroff	Limited	1%
2. Matthew James Bottroff	Limited	1%

By this application as originally filed, J&B sought a cement contract carrier permit for operations within and to the Counties of San Luis Obispo, Santa Barbara, Ventura, Kern, and San Bernardino. A timely protest was filed on December 13, 1989 by Cement Carriers, Inc.; Fiske Bros., Inc.; Diamondback Express, Inc.; Action Cement Transport, Inc.; Iron Horse Equipment Corp.; and WMB Transportation (protestants). The protest alleges that each of the protestants hold either cement carrier certificates or cement contract carrier permits authorizing transportation to and within some or all of the counties set forth in the application.

On January 22, 1990, J&B filed an amendment to the application wherein it requested that the authority sought be limited to service solely within the County of Santa Barbara and solely for the account of Lompoc Transit Mix, Inc. (Lompoc), a California corporation. The amendment states that Lompoc is owned by James R. Bottroff, who with his wife is a limited partner of J&B, holding a 48% interest. Attached to the amendment is a statement by Daniel K. Gaston, one of the attorneys of the law firm representing the protestants, which states in part:

"I have reviewed the foregoing Amendment to Application and, contingent upon the Commission's acceptance of the filing of said amendment, I state that the protest of each of the Protestants in the said proceeding is hereby withdrawn."

By letter dated February 5, 1990 signed by Gaston and John Begg, applicant's general partner, requesting that the amendment to the application be changed to provide that the authority sought be limited to service from any and all points of origin to and within the County of Santa Barbara and solely for the account of Lompoc.

J&B's balance sheet as of January 25, 1989 discloses assets of \$96,657 offset by liabilities of \$35,000, a resultant net worth of \$61,657.

The application states that J&B will not handle C.O.D. shipments, will not lease equipment from employees, and will not engage subhaulers; therefore, it is not subject to the bonding requirements of General Orders (GO) 84 and 102 Series. On July 3, 1989, we received a certification from J&B which states that it will not transport hazardous materials or hazardous wastes. The certification is received into evidence as Exhibit 1.

In 1988, the Legislature added §§ 460.5, 1063.5, and 3553 to the Public Utilities (PU) Code. These sections established new requirements which applicants must meet before the Commission may

issue new authorities or allow transfers of existing authorities. § 3553 is the section applicable to cement contract carrier authorities.

§ 3553(a) contains eight subsections covering requirements which must be met as follows:

"3553. (a) The commission shall issue or authorize the transfer of no permit under this chapter except upon a showing before the commission and a finding by the commission that the applicant or proposed transferee meets all of the following requirements:

"(1) Is financially and organizationally capable of conducting an operation that complies with the rules and regulations of the Department of the California Highway Patrol governing highway safety.

"(2) Is committed to observing the hours of service regulations of state and, where applicable, federal law, for all persons, whether employees or subhaulers, operating vehicles in transportation for compensation under the permit.

"(3) Has a preventive maintenance program in effect for its vehicles used in transportation for compensation that conforms to regulations of the Department of the California Highway Patrol in Title 13 of the California Code of Regulations.

"(4) Participates in a program to regularly check the driving records of all persons, whether employees or subhaulers, operating vehicles used in transportation for compensation requiring a class 1 driver's license under the permit.

"(5) Has a safety education and training program in effect for all persons, whether employees or subhaulers, operating vehicles used in transportation for compensation.

"(6) Will maintain its vehicles used in transportation for compensation in a safe operating condition and in compliance with the

Vehicle Code and with regulations contained in Title 13 of the California Code of Regulations relative to motor vehicle safety.

"(7) Has filed with the commission a certificate of workers' compensation insurance coverage for its employees or a certificate of consent to self-insure issued by the Director of Industrial Relations.

"(8) Has provided the commission an address of an office or terminal where documents supporting the factual matters specified in the showing required by this section may be inspected by the commission and the Department of the California Highway Patrol."

On July 31, 1989, we received a certification from J&B concerning the requirements of PU Code § 3553. The certification is received in evidence as Exhibit 2.

The information set forth in the application and Exhibit 2 disclose that J&B meets the requirements of § 3553 as follows:

1. The financial data contained in the application discloses that J&B has demonstrated it meets this requirement.
2. and 6. § 3553(b) provides that the commission may base a finding with respect to these requirements on a certification by the Commission that applicant has filed a sworn declaration of ability to comply and intent to comply. The sworn declaration of J&B's General Partner is included as part of Exhibit 2.
- 3., 4., and 5. Exhibit 2 discloses that J&B meets these requirements.
7. J&B filed its certificate of workers' compensation insurance coverage on June 23, 1989. (Exhibit 3.)
8. J&B is located at:

1195 West Laurel Avenue
Lompoc, CA 93436

Notice of the filing of the application and the amendment thereto appeared on the Commission's Daily Transportation Calendars of November 13, 1989 and January 26, 1990, respectively. No protests, other than the one mentioned above which was withdrawn, have been received.

The Transportation Division has advised that:

"The Analyst Unit staff has reviewed the application and believes it is one which, in the absence of protest, may be granted by ex parte order, providing that the applicant has complied fully with General Order 100-L, the Vehicle Code and with regulations contained in Title 13 of the California Code of Regulations relative to motor vehicle safety."

Findings of Fact

1. J&B meets all requirements for financial responsibility, residency, type of transportation to be performed, expected results of operations, and need for service.

2. J&B complies with § 3553.

Conclusions of Law

1. The application should be granted.

2. A public hearing is not necessary.

O R D E R

IT IS ORDERED that the Executive Director shall issue a cement contract carrier permit to J & B Trucking, a limited partnership, authorizing operations from any and all points of

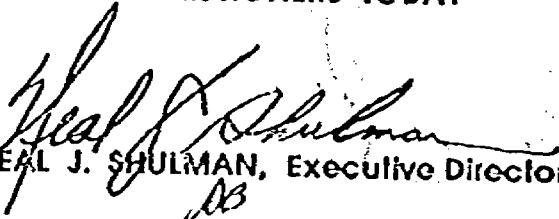
origin within the State to and within points in the County of Santa Barbara, solely for the account of Lompoc Transit Mix, Inc.

This order is effective today.

Dated MAR 28 1990, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY


NEAL J. SHULMAN, Executive Director
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