

Decision 90 05 002 MAY 04 1990

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
John G. Bradley, Jack L. Collins and)	
Chris E. Collins doing business as)	
J & J Trucking for authorization to)	Application 88-12-037
obtain a cement contract carrier)	(Filed December 20, 1988)
permit to operate in the Counties of)	
Fresno, Madera and Merced.)	

Chris E. Collins, for himself and John G. Bradley and Jack L. Collins, applicants.
Terry D. Fortier, for Commercial Transfer, Inc., and Gregg Underdown, for Armadillo Trucking, Inc., protestants.
T. W. Anderson, for National Cement Company of California, interested party.

O P I N I O N

John G. Bradley, Jack L. Collins, and Chris E. Collins, a general partnership, doing business as J & J Trucking (J & J), request a permit to operate as a Cement Contract Carrier from any all points within the State of California to any and all points within the counties of Fresno, Madera, and Merced.

Public hearing was held before Administrative Law Judge (ALJ) O'Leary at Fresno on April 27, 1989 at which time the matter was submitted.

The partners of J & J also own 100% of the stock of Volanti Concrete Co., Inc. (Volanti), a corporation, as follows:

- John G. Bradley 89%
- Jack L. Collins 10%
- Chris E. Collins 1%.

Volanti is in the ready mix concrete business. In the conduct of its business it uses proprietary equipment to transport the raw

materials necessary for mixing concrete including cement to its various plants..

Negotiations are being conducted for the sale of Volanti. If a sale of Volanti is consummated it is the intent of the principals that the transportation equipment used to transport the raw materials will not be included as part of the sale. This equipment would be used by J & J to perform the transportation of raw materials, including cement to Volanti. A cement contract carrier permit would be required.

The equipment which will be used, in the event the application is granted consists of one tractor and one set of pneumatic hopper trailers. Financial statements attached to the application included a balance sheet as of September 30, 1988 and a projected profit and loss statement for a six-month period. The balance sheet discloses total assets of \$165,343, liabilities of \$30,732, and a net worth \$134,611. In response to questions by the ALJ, the representative of J & J stated that the balance sheet was Volanti's rather than J & J's. There is also attached to the application a forty-five day working capital worksheet. Analysis of the worksheet discloses that it is based on the balance sheet of Volanti. The projected profit and loss statement projects revenues of \$123,500 and expenses of \$92,330 a profit of \$31,170.

On July 3, 1989 the proposed decision of ALJ O'Leary, which recommended that the application be denied, was filed and mailed to the parties in accordance with Public Utilities (PU) Code § 311 (d). The recommendation to deny the application was based upon the submission of the financial data of Volanti rather than the financial data of J & J.

On October 10, 1989, Commissioner Duda issued his ruling setting aside submission and reopening the matter for the purpose of receiving additional evidence, namely a balance sheet and a 45-day working capital worksheet of the applicants. The data was submitted by applicants on October 26, 1989 and was received in

evidence as late-filed Exhibit 7. The ruling provided for the mailing of Exhibit 7 to the other appearances and for the submission of comments by them within ten days after the mailing of Exhibit 7. The ruling further provided for the resubmission of the matter upon the receipt of the comments by the other appearances.

Rather than file comments, Commercial Transfer, Inc. (CTI) filed a Petition to Set Aside Submission (Petition) on November 3, 1989. In response to that petition Commissioner Duda issued another ruling on November 20, 1989 which provided as follows:

"IT IS RULED that:

1. The submission heretofore entered in this proceeding is set aside and the matter reopened for the limited purpose of providing Commercial Transfer, Inc. an opportunity to:
 - a. Cross-examine applicants concerning Exhibit 7;
 - b. Cross-examine applicants concerning the counties within which the plants of Volanti Concrete Co., Inc. are located, and
 - c. Present rebuttal to the extent authorized by the Presiding Officer.
2. Public hearing will be held at a time and place to be determined."

Further hearing was held before ALJ O'Leary at Fresno, on January 17, 1990. At that hearing, after consultation with counsel for protestant CTI, applicants amended the application to provide that the authority sought be limited to transportation solely for the account of Volanti Concrete Company, Inc. from any and all points of origin to the existing plants of Volanti Concrete Company, Inc. at locations in Fresno County at Fresno, Kerman, and Mendota.

As a result of the amendment proposed, counsel for CTI stated that the protestants would withdraw their protests. By letter dated February 15, 1990 Armadillo Trucking confirmed that counsel for CTI was authorized to withdraw the protest of Armadillo Trucking. The letter is received in evidence as Exhibit 8.

J & J's Balance Sheet as of September 30, 1989 discloses Assets of \$171,873 offset by liabilities of \$18,842, a resultant net worth of \$153,031. Its projected Profit and Loss Statement for a nine-month period projects income of \$41,793, expenses of \$17,737 and a net profit before income taxes of \$24,056.

The application states that J & J 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. The application also states that Southwest will not transport hazardous materials or hazardous wastes.

In 1988, the Legislature added § 3553 to the (PU) Code. This section establishes new requirements which applicants must meet before the Commission may issue new authorities or allow transfers of existing authorities to cement contract carriers.

The evidence discloses that J & J meets all of the requirements of Section 3553, except that it has not filed its certificate of workers' compensation coverage pursuant to Section 3553(a)(7).

Findings of Fact

1. J & J meets all requirements for financial responsibility, residency, type of transportation to be performed, expected results of operations, and need for service.
2. J & J complies with Section 3553, with the exception of 3553(a)(7).

Conclusion of Law

The application should be granted after J & J files its certificate of workers' compensation insurance coverage.

ORDER

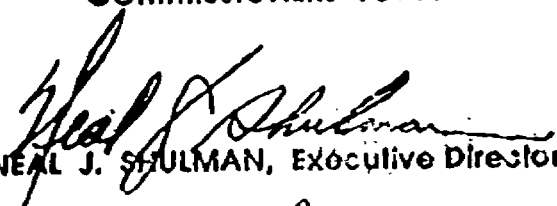
IT IS ORDERED that the Executive Director shall issue a cement contract carrier permit to John G. Bradley, Jack Collins, and Chris E. Collins, a partnership, doing business as J & J Trucking, authorizing operations solely for the account of Volanti Concrete Company, from any and all points of origin within the State to the plants of Volanti Concrete Company, Inc. at its existing locations in the County of Fresno, at Fresno, Kerman, and Mendota upon compliance with PU Code Section 3553(a)(7).

This order is effective today.

Dated MAY 04 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