

Decision 82 05 023

MAY - 4 1982

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 Virginia Dejesus, doing business as )  
 Pintail Trucking, Inc., for permission )  
 to obtain a Cement Contract Carrier )  
 Permit to operate in the Counties of )  
 San Luis Obispo, Kern, and San )  
 Bernardino. )  
 (File 372.70) )

Application 82-03-13  
(Filed March 4, 1982)

INTERIM OPINION

By this application Virginia Dejesus, president of Pintail Trucking, Inc., a California corporation, seeks issuance of a cement contract carrier permit. Copies of the application were served on six cement shippers and on the California Trucking Association. Notice of filing of the application appeared in the Commission's Daily Calendars of March 5 and 22, 1982. Five protests to the application have been received from cement carriers operating in the counties requested to be served by applicant.

Applicant currently holds highway contract carrier and dump truck carrier permits. It also possesses a certificate of public convenience and necessity to operate as a highway common carrier for the transportation of general commodities between all points and places north of the northern boundaries of San Luis Obispo, Kern, and San Bernardino Counties.

Applicant has furnished letters of support from five shippers of cement.

Applicant initially requested authority to serve all counties north of the northern boundaries of San Luis Obispo, Kern, and San Bernardino Counties. Shippers furnishing statements supporting the application advise they will use applicant's services

in connection with shipments of cement destined to Alameda, Contra Costa, Placer, Sacramento, San Mateo, Santa Cruz, and Solano Counties.

Applicant's balance sheet shows total assets of \$74,883 and a net worth of \$11,178 as of August 31, 1981. It uses in its current operations a van truck, a tractor, and 24 gravity hopper trailers. It is ready to purchase two pneumatic trailers for the transportation of bulk cement should this application be granted.

When an application for this type of authority is protested, it requires a hearing prior to our issuing a final decision granting or denying the request. This is because of the rather stringent provisions of Public Utilities (PU) Code § 3623.<sup>1/</sup> The Commission's San Francisco hearing calendar is unusually crowded due to administrative exigencies. The application is set for hearing June 21, 1982 in San Francisco before Administrative Law Judge John Lemke. However, we believe it would be unreasonable to delay issuance of a decision on the limited request sought here because

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1/ Pu Code § 3623 reads, in pertinent part:

- "3623. Before a permit to operate as a cement contract carrier is issued the commission shall require the applicant to establish by a preponderance of evidence:
- "(a) That he is a fit and proper person to receive a permit to operate as a cement contract carrier.
  - "(b) That he has sufficient operating and financial ability to initiate and continue the proposed operation.
  - "(c) That the privilege sought:
    - "(1) Will not endanger the safety of the public or interfere with the public use of the public highways or impair the condition or maintenance of them, directly or indirectly.
    - "(2) Will not unnecessarily burden the public highways.
    - "(3) Will not impair 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."

of our inability to proceed more promptly to hearing. However, such issuance would be justified if we were to limit the authority for 120 days to service in the counties supported by letters from shippers.

The five carriers opposing the application note that business conditions in the construction industry are poor, causing some of their cement hauling equipment to be idle and occasioning layoffs among their operating personnel. One protestant alleges that each of the shippers supporting applicant's request has its own cement hauling authority, and applicant could therefore transport cement for them in accordance with our "cross-subhauling" decision (Decision 91247 dated January 15, 1980 in Case 10278). But an examination of the records of permits maintained in our Transportation Division reveals that the allegation is incorrect with respect to at least two of the shippers.

We will authorize applicant to operate as a cement contract carrier, for 120 days, to points of destination located in Alameda, Contra Costa, Placer, Sacramento, San Mateo, Santa Cruz, and Solano Counties. This interim authority will not prejudice the rights of protestants to challenge the application at the formal hearing to be conducted June 21, nor will it guarantee issuance of permanent authority based on operations conducted on this temporary basis. This temporary grant will not impair the ability of existing carriers to provide adequate services at the lowest possible reasonable rates.

We will caution applicant that it has furnished letters of support from five shippers who indicate they will avail themselves of applicant's services on shipments of cement to destinations in seven counties. PU Code § 3627 provides that the existence of more than five contracts contemporaneously in effect is prima facie evidence of holding out as a public utility cement carrier.

Findings of Fact

1. Applicant has requested authority to operate as a cement contract carrier to points of desination located north of the northern boundaries of San Luis Obispo, Kern, and San Bernardino Counties.

2. Applicant has furnished letters of support from five cement shippers indicating they would use applicant's services on shipments destined to points located in Alameda, Contra Costa, Placer, Sacramento, San Mateo, Santa Cruz, and Solano Counties.

3. Applicant is currently conducting operations as a highway contract carrier, a dump truck carrier, and a highway common carrier.

4. Applicant is a fit and proper person to receive a temporary permit as a cement contract carrier, and possesses sufficient operating knowledge and financial ability to perform this operation.

5. Applicant's equipment will not endanger the safety of highways or impair the condition or maintenance of them either directly or indirectly.

6. Applicant filed its request on March 4, 1982. Because of the Commission's crowded San Francisco calendar, hearing on the application will not be possible until June 21, 1982.

7. It would not be unreasonable to temporarily allow applicant to conduct the limited operations supported by shippers pending hearing on the application and issuance of a final decision in this proceeding.

8. Issuance of a temporary authority to operate as a cement contract carrier to the counties indicated above will not impair the ability of existing certificated cement carriers or permitted cement contract carriers to provide adequate service at the lowest possible reasonable rates.

9. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

10. The following order complies with the guidelines in the Commission's Energy Efficiency Plan.

Conclusions of Law

1. Applicant should be granted a cement contract carrier permit for 120 days authorizing operations to points in Alameda, Contra Costa, Placer, Sacramento, San Mateo, Santa Cruz, and Solano Counties.

2. The effective date of the following order should be the date of signature to be consistent with the issuance of permits to other classes of carriers.

INTERIM ORDER

IT IS ORDERED that upon compliance with the Commission's General Order Series 100, the Executive Director shall issue a cement contract carrier permit to Pintail Trucking, Inc. authorizing operations to points in Alameda, Contra Costa, Placer, Sacramento, San Mateo, Santa Cruz, and Solano Counties. The

authority granted shall expire 120 days from the effective date of this order unless sooner extended, modified, or canceled by further order of the Commission.

This order is effective today.

Dated MAY 4 1982, at San Francisco, California.

I dissent.

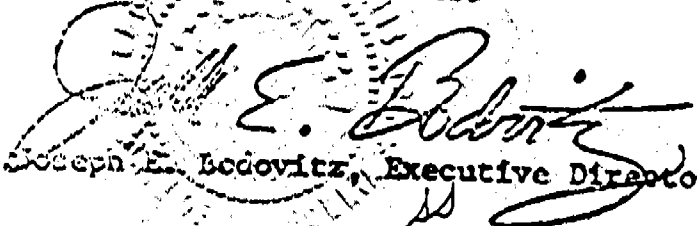
JOHN E. BRYSON, Commissioner

RICHARD D. GRAVELLE  
LEONARD M. GRIMES, JR.  
VICTOR CALVO  
Commissioners

I dissent.

PRISCILLA C. GREEN, Commissioner

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

  
Joseph E. Ledovitz, Executive Director