

ALJ/rr/nb

ORIGINAL

Decision 82 06 078 JUN 15 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA.

Application of FRANCISCO G. GALVAN,)
 going business as GALVAN TRUCKING,)
 for a permit to operate as a cement)
 contract carrier, (File 372.70,)
 T-92,216) Fresno.)

Application 82-01-54
 (Filed January 27, 1982)

Francisco G. Galvan, for Galvan Trucking,
 applicant.
Terry Fortier, Attorney at Law, for
 Commercial Transfer, Inc.;
Ronald Rigazio, for Max Binswanger
 Trucking; Henry Fikse, for Fikse
 Bros., Inc.; and Jennie Fikse, for
 Henry Fikse Trucking; protestants.
T. W. Anderson, for General Portland,
 Inc., and Don Austin, for Monolith
 Portland Cement Company, interested
 parties.

O P I N I O N

By this application Francisco G. Galvan (Galvan) seeks a cement contract carrier permit. Copies of the application, requesting authority to serve the entire State, were served on six cement shippers and on the California Trucking Association. Notice of filing of the application appeared in the Commission's Daily Calendar of January 28, 1982.

The application was protested by Commercial Transfer, Inc. (CTI) by letter dated February 10, 1982. Accordingly, a duly noticed public hearing was held before Administrative Law Judge (ALJ) John Lemke in San Francisco on March 18, 1982 and the matter was submitted.

Evidence

Galvan

Galvan's application contains the following information, which he adopted as part of his testimony:

Galvan's business location is 1377 Gaschen Avenue, Fresno, California 93725. He has a flatbed truck, a tractor, and two flatbed trailers with which to provide the proposed service.

Galvan certifies that he has resided in California for not less than 90 days preceding the filing of his application. His application contains a certificate of support from Valley Building Materials (Valley) of Fresno.

Galvan has held for-hire operating authority with this Commission since 1969 under File T-92,216. He currently possesses a certificate of public convenience and necessity to operate as a highway common carrier. He also operates under highway contract carrier, agricultural carrier, and heavy-specialized carrier permits. All of these authorities allow transportation between all points within the State of California. Galvan grossed \$105,000 during 1981 from his California intrastate operations.

While he originally sought authority to serve all destinations in the State of California, Galvan amended his request at the hearing. He now requests permission to transport only shipments of sacked cement to Fresno County.

He would assess the level of rates set forth in Minimum Rate Tariff (MRT) 10 or as otherwise prescribed by the Commission.^{1/}

Galvan transports lumber to the Los Angeles area. He is attempting to improve his efficiency and financial position by transporting occasional backhauls of sacked cement to Fresno. He is properly assessing the rates set forth in Transition Tariff 2 on the lumber he transports.

Galvan testified that the consignee who provided a certificate of support is relatively new in Fresno and has no facilities to receive shipments of bulk cement. It would receive one load per month of sacked cement.

Protestants

Evidence was adduced by CTI through Tim Fortier, vice president of operations, who testified as follows:

1. CTI has been a cement carrier since 1963, serving all shippers on a statewide basis. It employs 40 drivers.
2. CTI operates 14 sets of pneumatic and 20 sets of flatbed equipment. It does most of its cement hauling in the central valley and Fresno areas.
3. Conditions in the building industry have been poor for the past two years. Eight or ten units of CTI's equipment have been idled because of these conditions; yet, CTI purchased six new tractors about a year ago.
4. CTI has recently been hauling eight or ten loads per month of sacked cement into Fresno County. This is down somewhat from the number transported when business conditions were better.

^{1/} MRT 10 was canceled effective April 1, 1982 by Decision (D.) 82-02-134, dated February 17, 1982, in Case 5440, OSH 103. Thereafter cement contract carriers are required to assess rates no lower than lawfully published cement common carrier rates or rates of other cement contract carriers.

5. CTI has recently laid off driver, office, and shop personnel because of business conditions.
6. Fortier recently contacted a sales clerk with Valley and was advised that the company was not presently taking shipments of cement. Fortier did not speak with the owner of Valley, Mr. Soiz, who signed the certificate of support attached to Galvan's application.
7. There are five cement carriers based in and around Fresno. About 75 or 80 cement carriers are authorized to serve Fresno County.
8. CTI grossed \$2.3 million from all operations during 1981. 40% of that revenue was derived from cement hauling; about one-half of the cement revenue came from the transportation of sacked cement.
9. CTI has never transported cement for Valley
10. There were 178 cement common carrier, and 16 cement contract carrier operating authorities in effect in California at the end of 1981. This is sufficient to transport the cement which moves on a for-hire basis within California.

Max Binswanger Trucking

Ronald Rigazio appeared for protestant Max Binswanger Trucking (Binswanger). He did not testify but made a closing statement which presented essentially the following information.

Binswanger transports cement in California primarily to points in Fresno County and south; operates 95 power units and 180 cement trailers; grossed \$6.8 million with an operating loss of \$250,000 in 1981; earned one-half of its total revenue from California intrastate hauling; has laid off four management personnel and about one-half of its drivers; and maintains a 24-hour six-day-per-week dispatch able to provide immediate service to any shipper or receiver.

Rigazio believes the existing carriers can adequately serve shipper needs in California.

Fikse Bros., Inc.

Henry Fikse appeared for protestant Fikse Bros., Inc. He did not testify but offered a closing statement consisting of the following: His company presently serves Fresno County; gross revenue during 1981 was about \$3.2 million; fleet operations are off about 50 percent.

Counsel for CTI points out that Public Utilities (PU) Code Section 3623(c) (3) requires an applicant to establish, by a preponderance of evidence, that issuance of a new permit will not impair the ability of existing cement common or contract carriers to provide adequate services at the lowest possible reasonable rates. He believes that to allow carriers to come in and skim traffic in a market which present carriers are adequately serving, and where there is already excess capacity, would be detrimental to the operations of existing carriers.

Discussion

The Legislature has established specific standards for the issuance of cement contract carrier permits. The provisions of PU Code Section 3623 require, inter alia, that an applicant must establish by a preponderance of evidence:

- (a) That he is fit and proper;
- (b) That he possesses adequate operating and financial ability;
- (c) That the privilege sought:
 - (1) Will not endanger the safety of the public or interfere with public use of public highways;
 - (2) Will not unnecessarily burden the public highways; and, lastly,
 - (3) Will not impair the ability of existing for-hire cement haulers to provide adequate service at the lowest possible reasonable rates.

Protestants do not allege that Galvan is not a fit and proper person, nor that he does not possess adequate operating and financial ability. Nor do they maintain that granting the permit sought will endanger the safety of the public or interfere with the public use of public highways or unnecessarily burden the public highways. Protestants contend that the requirement set forth in PU Code Section 3623(c) (3) mandates our denial of this application based on the evidence.

A truckload shipment of 47,500 pounds (the prescribed minimum weight) of sacked cement moving from central Los Angeles to Fresno produces revenue of about \$433.00. There will be only 12 loads per year moving to this new consignee. This is about \$5,200 in new annual revenue. Spread over the four protesting carriers this would produce additional income for each of \$1,300 if they were to transport all of the 12 shipments available.

Protestants who supplied information for this record earned \$6.8 million, \$3.2 million, and \$2.3 million during 1981. (Galvan's gross operating revenue was slightly over \$100,000.) Compared with protestants' annual revenues, \$1,300 is a negligible amount, far too small to consider its loss to them an impairment of their ability to render adequate services. Further, this is new traffic which Galvan proposes to transport for a new receiver. He will not be taking business from existing carriers.

While we acknowledge that conditions in the building industry are poor and carrier revenues are down, it would be patently unreasonable to hold that the limited transportation service proposed by Galvan would impair the ability of existing carriers to provide adequate services at the lowest reasonable rates.

Finally, we are aware of no arrangement guaranteeing that all of the cement for Valley must be transported by Galvan. The certificate of support attached to the application merely states that the receiver will be taking one load per month. Protestants and other existing carriers are free to solicit this business along with Galvan. We will authorize Galvan to transport sacked shipments of cement from all points in California to points of destination located in Fresno County.

Findings of Fact

1. Galvan is a fit and proper person to receive a permit as a cement contract carrier and possesses sufficient operating knowledge and financial ability to perform the proposed operation.

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

3. Galvan's proposed operation will not unnecessarily burden the public highways, is necessary to serve the public, and will not impair the ability of presently certificated cement carriers or permitted cement contract carriers to provide adequate service at the lowest possible reasonable rates.

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

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

Conclusion of Law

Galvan should be granted a cement contract carrier permit authorizing the transportation of sacked cement from all points within the State of California to points in Fresno County. 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.

O R D E R

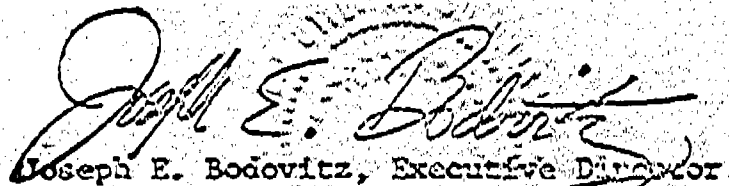
IT IS ORDERED that upon compliance with the Commission's General Order Series 100, the Executive Director shall issue a cement contract carrier permit to Francisco G. Galvan authorizing the transportation of sacked cement from all points within the State of California to destinations in Fresno County.

This order is effective today.

Dated JUN 15 1982, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. CRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. GREW
Commissioners

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


Joseph E. Bodovitz, Executive Director