

Decision 82 11 039 NOV 3 - 1982

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application)
of Philip A. Rivera, dba PAR)
Trucking, to extend his certifi-)
cate of public convenience and)
necessity for the transportation)
of cement between points in the)
county of San Joaquin pursuant to)
Section 1063 of the California)
Public Utilities Code.)

Application 82-03-71
(Filed March 19, 1982)

Robert Fuller, Attorney at Law, for PAR
Trucking, Inc., applicant.

Ellis Ross Anderson, Attorney at
Law, for Foothill Bulk Transport,
CAP Transport, Incorporated, and
Universal Transport System; Les
Calkins, for Les Calkins
Trucking; John C. Russell,
Attorney at Law, for Fikse Bros.,
Incorporated; and Terry D.
Fortier, Attorney at Law, for
Commercial Transfer, Incorporated
and E. F. Mitchler Company;
protestants.

Robert Fuller, Attorney at Law,
for Southwestern Portland
Cement Company and Johns-Manville
Sales Corporation; Don Austin,
for Monolith Portland Cement
Company; and T. W. Anderson,
for General Portland, Incorporated;
interested parties.

O P I N I O N

After filing this application Philip A. Rivera (Rivera) caused his company to be incorporated under the name PAR Trucking, Inc. (PAR). In Decision 82-04-65 dated April 6, 1982, the Commission authorized the transfer of Rivera's cement carrier certificate to PAR. At Rivera's request this application will be treated as an application by PAR.

The application requests a certificate be issued PAR to operate as a cement carrier from any and all points of origin to any and all points within San Joaquin County. The application was protested by Foothill Bulk Transport (Foothill), CAP Transport, Incorporated (CAP), Universal Transport System (Universal), Les Calkins Trucking (Calkins), Fikse Bros., Incorporated (Fikse), Commercial Transfer, Incorporated (Commercial), and E. F. Mitchler Company (Mitchler). A hearing was held at Los Angeles on July 6, 1982 before Administrative Law Judge Pilling.

PAR currently has a cement carrier certificate which authorizes it to operate from any and all points of origin to any and all points in the Counties of Fresno, Imperial, Inyo, Kern, Kings, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Tulare, and Ventura. PAR also has a statewide highway common carrier certificate, a dump truck permit, and a highway contract carrier permit. It operates 22 tractors, 41 pneumatic trailers, and 3 flatbed trailers and employs 32 drivers. As of August 31, 1981 PAR's predecessor company had a net worth of \$313,000 and for the eight months ending on that date had a gross income of \$1,175,000 and gross profit of \$243,677. PAR's headquarters is in Lancaster.

The witness for PAR testified that it was making this application to serve the Johns-Manville Corporation (J-M) plant located at Stockton. The witness stated that for the past nine years PAR and its predecessor company had been the prime carrier of cement in bulk from Southwestern Portland Cement Company (SPCC), at Victorville to the J-M plant at Long Beach where the cement was used in the manufacture of asbestos cement pipe (transite pipe). Due to depressed general economic conditions J-M closed its Long Beach plant on May 11, 1982 leaving J-M's plant at Stockton as its only plant in California making transite pipe. PAR substituted other business for the lost J-M business, but finds itself in need of additional traffic to meet its obligation to its shippers.

J-M's Stockton plant receives its cement from SPCC at Victorville. This cement moves by rail. PAR expects eventually to supplant this rail movement using its own trucks to deliver approximately 4 to 5 loads during each 24-hour period. Initially, however, PAR expects that it will start out hauling only 2 loads a day since it currently has firm return-haul business to match only 2 northbound loads and it will not handle a J-M move unless it has a return haul. PAR is optimistic that it will eventually generate sufficient return-haul business to match the 5 J-M loads per day. PAR expects to charge J-M the rail rate on the move. PAR filed a Rate Reduction application with the Commission seeking permission to publish the rail rate for the move but withdrew the application when the Commission staff pointed out PAR had no authority to which the rate could attach.

PAR operates 26 trailers with J&L bottoms which PAR claims are superior to the pickle barrel bottom trailers operated by many cement haulers. The latter bottom allows for a buildup of product in the bottom hopper which mixes with subsequently hauled products causing them to be contaminated. The J&L bottom, on the other hand, allows for a complete unloading of the product with no buildup left

in the trailer. PAR used its J&L bottom trailers in the J-M Long Beach haul and will use them in the proposed haul.

The witness for J-M, who is plant superintendent of J-M's Stockton plant, confirmed the closing of his company's Long Beach plant, the use of PAR as a house carrier on bulk cement from SPCC to the former Long Beach plant, and the Stockton plant's source of cement supply. Demand for J-M's pipe will now be satisfied by the Stockton plant. He stated that SPCC is the only cement company that can supply the specialized cement which his company has to have in the manufacture of its pipes and that his company has tried other cement companies, which would be better for his company, but they have never been able to come up with a cement that it can use. He stated that there has been a strike at the Stockton plant for the last 15 months which is recognized by the railroad labor union of the Western Pacific Railroad (WP), which delivers the cement to his plant, and as a consequence no WP hourly railroad employee will come into the plant or on the plant property. Hence, rail delivery is effected only when there are enough WP salaried employees to make up a train crew, and that is not very often. Similarly, when he calls in empty rail cars it is sometimes 3 to 6 days before WP will pull them out. Because of this situation WP has billed his company \$90,000 for demurrage. The Teamsters Union does not recognize the picket line so that truck deliveries can be made at his plant without incident. The adverse labor situation with its attendant unsatisfactory rail service is expected by the witness to last for a long time.

The J-M witness stated his company is supporting PAR in this application because PAR has proven its ability to give efficient service with clean, first-class equipment over the years. Furthermore, PAR has terminals for its equipment in Southern California. This is important because, with limited storage facilities at Stockton, J-M wants the flexibility of making last minute changes in the flow of cement to its plant, a situation, in

the witness' opinion, that only a carrier which has terminals for its equipment in the south of the State can effectively respond to. But J-M would use PAR only if PAR was authorized to and did charge the rail rate. Otherwise, his company would buy its own trucks and haul the cement in proprietary carriage, even though the economics of doing so are questionable. On the other hand, if the additional costs resulting from poor rail service, when added to the rail rate, exceeded the current truck charge his company might decide to use PAR anyway at the current truck rates if PAR was unable to publish rail rates. ✓

On occasion cement carriers have been used to bring cement from SPCC to the Stockton plant with varied results. During one 40-day period two cement carriers were used but they were found to have falsely represented that they had authority to make the moves when they did not have the authority. Several cement carriers out of Victorville were used but they engaged subhaulers which used unclean bottom dumps for the moves and delivered a contaminated product. During the past several weeks WP would not make delivery of several rail cars which were sitting in downtown Stockton and a cement carrier named Hartwick and Hand, Inc. was used on an emergency basis to bring 15 truckloads of cement from SPCC to J-M's Stockton plant. Calkins was used on 12 occasions in connection with an emergency to bring cement from SPCC to J-M's Stockton plant. The J-M witness expressed no dissatisfaction with the cement delivery services of either Hartwick and Hand, Inc. or Calkins.

A witness from SPCC appeared and testified in support of giving PAR authority to serve between its Victorville plant and J-M's Stockton plant.

Each of the protestants is a cement carrier, has appropriate operating authority to render the requested service, and represents it is willing and able to handle the J-M moves to J-M's

satisfaction. Each has experienced a substantial loss of business due to the current depressed economic conditions.

Protestant Calkins, which has moved cement for J-M from SPCC to J-M's Stockton plant, has its headquarters at Lodi but is willing to station sufficient equipment at Victorville to take care of the subject moves. However, he does not see the necessity of it since in order to take care of the 5 daily moves the trucks would be on the road at all times. Calkins' witness stated he had generally solicited J-M's business over the years. He stated that his company had filed point-to-point rates for various hauls and would be willing to file at rail rates at some later time. Calkins operates 13 pneumatic trailers among other pieces of equipment. Just about all his equipment is idle.

Protestant Fikse operates 26 pneumatic trailers with J&L bottoms. Its headquarters is in Cerritos. It has a truck yard in Victorville at which it permanently stations eight units of equipment. It also has a truck yard in Chino. 10 to 15 of its units remained parked every day due to lack of business.

Protestant Foothill is headquartered in Mountain View. It is a small outfit operating 9 tractors and 11 pneumatic trailers. Its total income for the five months ended May 31, 1982 was \$387,000 and it experienced an operating loss for that period of approximately \$3,800. Foothill contends a great deal of its trailer equipment is similar to the type operated by applicant. It has a customer in Bakersfield for whom it regularly hauls from the Bay Area and a return haul from Victorville to Stockton for J-M would make that existing traffic pattern more efficient and economical. But it could not by itself satisfy all J-M's equipment needs and would have to employ some subhaulers to cover all the 5 loads per day. Its equipment is used only 81% of the time.

The owner of Commercial testified that his company headquarters its trucks in Fresno and Pico Rivera. It operates 6 sets of bulk cement trailers. It has been providing service into San Joaquin County on a consistent basis for over 10 years. Due to the depressed economic conditions which have created a major decline in building material traffic in recent years there has been a considerably lessened demand for Commercial's services resulting in leaving it with an excess capacity of equipment. For the 6 months ended March 31, 1982 it suffered a loss of \$64,000.

Universal and CAP confirm that the existing recession has resulted in a sharp decline in the construction industry and that this, in turn, has diminished the need and demand for the service of cement carriers. They contend that if they and other existing cement carriers do not continue to enjoy the traffic which is available, their abilities to provide a reliable, economical, and efficient cement transportation service will be seriously eroded. For the Commission to authorize applicant to provide duplicating service will result in a dilution of traffic, threatening their ability to generate revenues required to maintain their existing services.

Discussion

The application requests authority to serve between all points in the State and points in San Joaquin County. However, the only evidence presented by PAR pertained to moves from a single source in Victorville to a single plant in Stockton. Furthermore, the only source of cement from which the Stockton plant can draw is the single source in Victorville. Clearly, no need for statewide authority has been shown. If any authority is granted it should be from San Bernardino County to San Joaquin County.

The subject traffic moves by rail, except on rare occasions. Therefore, if PAR is granted authority to haul, and does haul, the particular traffic, no cement carrier will have lost any

traffic it is presently hauling. It has not been shown that any existing cement carrier has expended any money or changed its position in detrimental reliance on securing the particular traffic. Hence, the WP and not any cement carrier stands to lose business if PAR is granted the authority.

In this case we have a consignee that is concerned about the poor and disruptive rail service it has been receiving and desperately wants to have its traffic move by truck. We also have a group of protestant cement carriers that claim to be ready, willing, and able to handle the traffic. Yet, the consignee continues to use rail service and the protestants continue not to handle the traffic. The element necessary to cause the consignee to substitute truck service for rail service is a lower truck rate. PAR proposes to supply this necessary element. None of the protestants expressed a willingness to do so. Denying PAR authority to perform the proposed service will simply prolong an uneconomic impasse. It is necessary for the economic well-being of the consignee's operation that an attempt to break this impasse be made, and we will authorize the proposed service so that PAR will be able to file for a rate reduction. This grant by no means implies that we will approve such rate reduction if PAR cannot justify the rate reduction from a cost standpoint.

Findings of Fact

1. PAR requests a cement carrier certificate authorizing it to transport cement from all points in the State to all points in San Joaquin County in order to provide service from SPCC at Victorville to the J-M plant in Stockton.

2. PAR presently operates as a cement carrier between a variety of points in the State and operates 22 tractors, 26 pneumatic trailers with J&L bottoms, and 3 flatbed trailers and employs 32 drivers.

3. Until May 11, 1982 when J-M's Long Beach plant closed due to the depressed economy, PAR was J-M's prime carrier of cement in bulk between SPCC and that Long Beach plant which uses the cement in the manufacture of transite pipe.

4. J-M's Stockton plant also manufactures transite pipe using cement furnished by SPCC.

5. The cement furnished by SPCC is the only cement found by J-M to be suitable in the manufacture of its transite pipe.

6. The J-M Stockton plant is set up to receive the equivalent of 5 truckloads of cement in bulk each 24-hour period from SPCC.

7. This cement is now moving by rail but in rare emergency instances has moved by truck.

8. Because of labor difficulties at the Stockton plant hourly paid train crews will not deliver cement to the Stockton plant and delivery of the cement as well as removal of empty rail cars must wait until there are enough salaried employees of the railroad to make up a train crew.

9. The refusal of the hourly paid rail workers to deliver the cement has caused J-M to receive highly unsatisfactory service and has resulted in costly disruptions in the plant's manufacturing processes.

10. J-M wants to substitute truck service for rail service as the means of transporting cement to its Stockton plant.

11. Current truck rates are not competitive with current rail rates.

12. The lack of competitiveness between the rates of the different modes economically precludes J-M from substituting truck service for rail service.

13. PAR has offered to charge J-M a reduced truck rate for the haul, subject to approval by the Commission and if this application

is granted, which will make it economically feasible for J-M to substitute PAR's service for rail service.

14. None of the protestants, all of which have authority to perform the haul and most of which have satisfactory equipment, expressed a willingness to attempt to secure a reduced truck rate to apply to the haul at this time.

15. Granting PAR authority to perform the subject haul will not take any business away from existing cement carriers.

16. PAR is financially fit and willing and able to conduct the proposed service.

17. Public convenience and necessity require that PAR be issued a certificate authorizing point-to-point service from SPCC at Victorville to J-M's plant at Stockton.

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

Only the amount paid to the State for operative rights may be used in rate fixing. The State may grant any number of rights and may cancel or modify the monopoly feature of these rights at any time.

Conclusion of Law

The application should be granted to the extent as set out in Appendix A.

O R D E R

IT IS ORDERED that:

1. An in-lieu certificate of public convenience and necessity is granted to PAR Trucking, Inc. authorizing it to operate as a cement carrier, as defined in PU Code § 214.1, between the points set forth in Appendix A.

2. Applicant shall:

a. File with the Transportation Division a written acceptance of this certificate within 30 days after this order is effective.

- b. Establish the authorized service and file tariffs within 120 days after this order is effective.
- c. State in its tariffs when service will start; allow at least 30 days' notice to the Commission; and make tariffs effective 30 or more days after this order is effective.
- d. Comply with General Orders Series 100, 104, 117, and 150, and the California Highway Patrol safety rules.
- e. Maintain accounting records in conformity with the Uniform System of Accounts.
- f. File an annual report by April 30 of each year.
- g. Comply with General Order Series 84 (collect-on-delivery shipments). If applicant elects not to transport collect-on-delivery shipments, it shall file the tariff provisions required by that General Order.

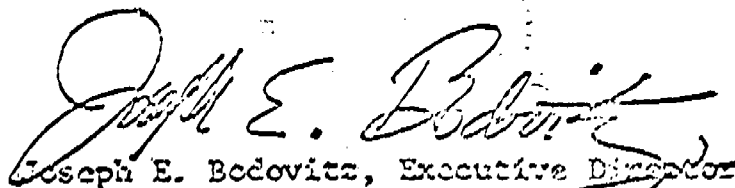
3. The certificate of public convenience and necessity granted in paragraph 1 shall supersede that granted by D.82-04-65 dated April 6, 1982 in Application 61054. That certificate is revoked on the effective date of the tariff filings required by paragraph 2.b.

This order becomes effective 30 days from today.

Dated NOV 3 1982, at San Francisco, California.

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

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


Joseph E. Bedovitz, Executive Director

PAR Trucking, Inc., by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to conduct operations as a cement carrier as defined in Public Utilities Code Section 214.1 from any and all points of origin to all points in the following counties, subject to the restriction set forth below.

Fresno	San Bernardino
Imperial	San Diego
Inyo	San Luis Obispo
Kern	Santa Barbara
Kings	Tulare
Los Angeles	Ventura
Orange	
Riverside	

Carrier is authorized to conduct operations from the City of Victorville in San Bernardino County, on the one hand, to all points within a one statute mile radius of the intersection of Airport Way and Sperry Road in San Joaquin County, on the other hand.

RESTRICTION:

This certificate of public convenience and necessity shall lapse and terminate if not exercised for a period of one year.

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

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