

ORIGINAL

Decision 83 02 049 FEB 16 1983

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application)
of Ronald L. Wade, an individual,)
for an extension of his)
Certificate of Public Convenience)
and Necessity to operate as a)
cement carrier.)

Application 82-03-45
(Filed March 11, 1982;
amended July 7, 1982)

- Donald Murchison, Attorney at Law, for Ronald L. Wade, applicant.
- Terry D. Fortier, Attorney at Law, for Commercial Transfer, Inc.; Ellis Ross Anderson; Attorney at Law, for Big Pine Trucking Company, Foothill Bulk Transport, CAP Transport, Inc., and Universal Transport, Inc.; and John C. Russell, Attorney at Law, for Fikse Bros., Inc.; protestants.
- T. W. Anderson, for General Portland, Inc.; G. B. Shannon, for Southwestern Portland Cement Company; and Don Austin, for Monolith Portland Cement Company; interested parties.

O P I N I O N

By application amended at the hearing, Ronald L. Wade (Wade), an individual, requests a certificate to operate as a cement carrier from points in Kern County to points in the Counties of Fresno, Imperial, Inyo, Kings, Madera, Mariposa, Merced, Mono, San Benito, San Diego, San Luis Obispo, Stanislaus, Tulare, and Tuolumne. The application was protested by Commercial Transfer,

Inc. (Commercial), Big Pine Trucking Company (Big Pine), Foothill Bulk Transport (Foothill), CAP Transport, Inc. (CAP), Universal Transport, Inc. (Universal), and Fikse Bros, Inc. (Fikse). Monolith Portland Cement Company (Monolith), General Portland, Inc. (General), and Southwestern Portland Cement Company (SPCC), appeared as interested parties. A hearing was held in Los Angeles on July 7, 1982 before Administrative Law Judge Pilling.

Applicant's Testimony

Wade currently operates as a cement carrier under a certificate authorizing him to serve from all points of origin to all points within the Counties of Kern, Los Angeles, Orange, Riverside, San Bernardino, Santa Barbara, and Ventura. He operates with three tractors, four pneumatic trailers, and two flatbed trailers. Wade drives one tractor and his son another. One tractor is used as a backup. As of December 31, 1981 Wade had a net worth of \$75,000. His business so far in 1982 is less than during the same period in 1981. His company headquarters are at San Fernando and he has been in the business of hauling cement for the past 20 years.

Ninety-nine percent of Wade's business is hauling outbound from the Monolith cement plant located 4 miles east of Tehachapi. Three-quarters of his traffic is in bulk and one-quarter is in sacks. Monolith gives Wade 2 truckloads a day 4 or 5 days a week. Wade's terminal is located about 85 miles--one hour and 45 minutes driving time--from the Monolith plant. Wade has been hauling out of Monolith for 20 years.

Supporting Shipper's Testimony

Monolith supports the application. The transportation manager of Monolith testified Monolith's cement plant and shipping point for cement is located 4 miles east of Tehachapi in Kern County. From there it ships approximately 500,000 tons of cement a year, one-half of which is picked up by its customers' proprietary trucks and the other one-half is shipped by common carrier trucks. Monolith controls the routing on about 130,000 tons. He stated that Monolith receives calls from its customers for cement during the day to be delivered generally the next day. At the end of the day it accumulates a list of deliveries to be made and assigns the hauls to the various carriers it uses. The dispatcher then calls the carriers and arranges for them to pick up the shipments the next day. Monolith has been giving Wade two shipments each day 5 days a week for many years and has found Wade's service to be superb.

Monolith wants Wade's service to the requested territory for several reasons. The first reason is to have Wade available to handle emergency shipments, which require speedy pickups and deliveries. Once or twice a week Monolith will receive a call from a customer for an emergency shipment to be delivered that same day. The reasons for these requests for emergency shipments vary. For example, the customer may have forgotten to order, or the customer's inventory control was not functioning properly and the customer suddenly finds itself out of cement during the middle of a pour. Since Wade's equipment comes to Monolith's plant each day to pick up routine traffic, Monolith wants the flexibility of reassigning this equipment for immediate dispatch to handle emergency shipments instead of delaying the shipment while shopping around for a carrier who has drivers and equipment available. While Monolith has a dozen or so carriers which give it satisfactory service into the area Wade

is requesting, these carriers sometimes cannot furnish Monolith with equipment to handle emergency shipments. To the Monolith witness' knowledge, Wade's trucks are stationed closer to the Monolith plant than any of protestants' trucks so Wade is better able than any of protestants to satisfy the speedy pickup and delivery requirements for emergency shipments.

The second reason Monolith wants Wade's service is that several of Monolith's customers go from county to county on jobs and they all request Wade's service. It would help Monolith maintain good customer relations with those customers if Monolith could accede to their requests when they have jobs in the additional area Wade is requesting.

The third reason is that Monolith has been using Wade for many years, almost as a house carrier. Monolith has had a very comfortable and close relationship with Wade and it feels secure when using his service.

If this application is granted Monolith does not expect that it will give Wade any greater traffic volume than Wade is now handling since Wade operates only two units of equipment and Monolith has been using that equipment to the fullest extent. However, Monolith expects that the destination of some of the traffic it will give to Wade will be in the area Wade is requesting rather than in the area Wade is presently serving.

Protestants' Testimony

Commercial

Protestant Commercial operates 35 units of equipment dedicated to the hauling of cement in 40 counties throughout the State. Its principal business is hauling cement from Kern County throughout the San Joaquin Valley and north to the Sacramento Area and the San Francisco Bay Area. It regularly solicits Monolith's cement traffic department and has continued to haul a great deal of cement out of Monolith. It has indicated to Monolith that it has excess equipment available to handle loads to the counties requested by Wade. Commercial has terminals at Fresno and Pico Rivera and has a truck stationed at Bakersfield on a regular basis.

Commercial has handled emergency shipments for Monolith to the requested area where calls for its service have come in the late afternoon, after hours, and on weekends. On other occasions Monolith has called Commercial for service and Commercial has diverted a truck to serve Monolith. On a daily basis Commercial has idle 6 sets of pneumatic cement trailers and over 10 sets of flatbed trucks and trailers because of the depressed market conditions in the cement-hauling business. Commercial objects to the granting of the application on the grounds that Commercial has the willingness and ability to handle the traffic Monolith expects to give to Wade and that such traffic would be diverted from Commercial and other carriers now handling it. This would result in a diminution in Commercial's business at a time when it can least afford to lose more traffic.

Foothill

Protestant Foothill is headquartered at Mountain View. It operates 9 tractors and 11 pneumatic trailers. Seventy-five percent of its business is hauling cement. It holds authority to transport cement between points for which applicant is seeking new authority. For the five months ended May 31, 1982 it had an operating loss of \$3,800. Foothill delivers 6 or 7 loads a day 6 or 7 days a week in Bakersfield from points in northern California and has, at the maximum, only two backhauls out of Bakersfield, the other 4 or 5 units having to return empty. These empties could very well proceed on to Tehachapi to serve Monolith's northbound loads and Foothill would be quite willing to perform such service. Foothill has not transported any loads for Monolith for the past three years. Foothill feels it can satisfy Monolith's service requirements and that there is no need to introduce a new carrier in the area, particularly now that times are so bad for all cement carriers.

Fikse

Protestant Fikse's primary business is hauling cement. It has cement carrier authority between Kern County and 9 of the 14 counties Wade is requesting to serve. It operates 30 sets of pneumatic double trailers, 3 sets of open-top double trailers, and six sets of flatbed doubles, all of which are capable of hauling cement. It has trucks stationed at Bakersfield which is only a one-hour drive from Tehachapi. On a daily average it has 12 units of idle equipment available to handle additional cement traffic. The witness for Fikse stated that Fikse solicits Monolith for traffic daily but for the last three years has not been favored with any traffic. Fikse's cement hauling business has decreased this year over the volume it transported last year.

CAP

Protestant CAP has cement carrier authority from Kern County to 13 of the 14 counties Wade is seeking to serve.

Universal

Protestant Universal has cement carrier authority from Kern County to 10 of the 14 counties Wade is seeking to serve.

Big Pine

Protestant Big Pine has cement carrier authority from Kern County to 2 of the 14 counties Wade is seeking to serve.

Discussion

Wade's equipment routinely comes to Monolith's plant on a daily basis and while the equipment is at the plant or on its way to the plant it is available for almost immediate dispatching to handle emergency shipments. Under these circumstances, while protestants

may have idle equipment parked at varying distances from the plant they could not match the speed of Wade's drivers and equipment in picking up and delivering emergency shipments. Monolith needs this flexibility of being able to reassign Wade's trucks to handle emergency shipments to satisfy its customers and remain competitive in its field.

Monolith's use of Wade for these emergency shipments could possibly inure to the benefit of some of the protestants in that they would get some of Monolith's routine traffic now ordinarily hauled by Wade while Wade's equipment was servicing emergency shipments to the new areas. Indeed, the Monolith witness stated that Wade would receive no greater volume of traffic than Wade was now receiving, only that some of the destination areas would be different than Wade was now serving. The same situation will obtain where Monolith's customers, who request Wade's service, work on jobs outside the area presently served by Wade. We believe that granting the requested authority will have an insignificant impact on protestants' business.

Findings of Fact

1. Wade requests a certificate to operate as a cement carrier from points in Kern County to the 14 counties previously described.
2. Wade currently operates under a cement carrier certificate which authorizes operations from all points of origin to all points within the counties of Kern, Los Angeles, Orange, Riverside, San Bernardino, Santa Barbara, and Ventura.
3. Wade operates with 3 tractors, 4 pneumatic trailers, and 2 flatbed trailers. One tractor is used as a backup.
4. Wade drives one tractor and his son drives the other tractor.
5. As of December 31, 1981 Wade had a net worth of \$75,000.
6. Ninety-nine percent of Wade's business is hauling outbound from the Monolith cement plant located in Kern County near Tehachapi.

7. Wade has been hauling for Monolith for 20 years.
8. Wade's equipment is routinely dispatched to the Monolith plant on a daily basis.
9. Monolith supports the application.
10. Monolith requires the flexibility of speedily diverting Wade's equipment from making routine hauls to transporting emergency shipments to the new areas.
11. To enhance its customer relations, Monolith wants to be able to use Wade to the new areas when Monolith's customers, who presently use Wade, get jobs in the new areas and request Wade's service.
12. If the application is granted Monolith does not expect to give Wade any greater volume of traffic than Wade is now handling for Monolith.
13. Where Monolith has used any of the protestants' service it has found service on nonemergency shipments and some emergency shipments to be adequate.
14. Many of the protestants have idle equipment due to the depressed economic conditions in the cement industry.
15. None of the protestants have equipment coming to Monolith's yard on a routine daily basis which can be diverted to transporting emergency shipments.
16. Granting the application would have an insignificant impact on protestants' business.
17. Public convenience and necessity require the granting of the application.
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.

Conclusion of Law

The application should be granted.

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.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Ronald L. Wade, an individual, authorizing him 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 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 his 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, 117, 123, and 150 and the California Highway Patrol safety rules.
 - e. Maintain accounting records in conformity with the Uniform System of Accounts.
 - f. Comply with General Order Series 84 (collect-on-delivery shipments). If applicant elects not to transport collect-on-delivery shipments, he shall file the tariff provisions required by that General Order.

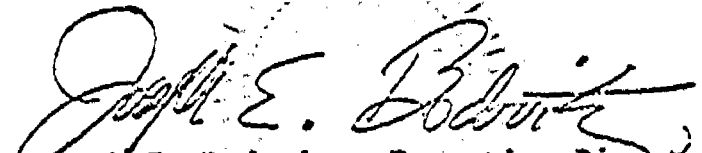
3. The certificate of public convenience and necessity granted in paragraph 1 shall supersede that granted by Decision 68995. That certificate is revoked on the effective date of tariff filings required by paragraph 2.b.

This order becomes effective 30 days from today.

Dated FEB 16 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
Commissioners

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


Joseph E. Bodovitz, Executive Director

Appendix A

RONALD L. WADE
(an individual)
doing business as
WADE TRUCKING CO.

Original Page 1

Ronald L. Wade, an individual, 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 and places in the Counties of Kern, Los Angeles, Orange, Riverside, San Bernardino, Santa Barbara, and Ventura, and from all points of origin in the County of Kern to all points and places in the Counties of Fresno, Imperial, Inyo, Kings, Madera, Mariposa, Merced, Mono, San Benito, San Diego, San Luis Obispo, Stanislaus, Tulare and Tuolumne, subject to the following restriction:

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.

Decision 83 02 049, Application 82-03-45.