

Decision 83 94 076 APR 20 1983**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 R & K TRUCKING, a corporation, for an)
 extension of its certificate of public)
 convenience and necessity for the)
 transportation of cement to between)
 points in the county of San Diego)
 pursuant to Section 1063 of the)
 California Public Utilities Code, and)
 the issuance of an in-lieu cement)
 carrier certificate of public)
 convenience and necessity.)

Application 82-11-41
 (Filed November 22, 1982)

O P I N I O N

R & K Trucking (applicant), a California corporation, holds a certificate of public convenience and necessity as a cement carrier authorizing operations in Kern, Los Angeles, Orange, Riverside, San Bernardino, and Ventura Counties granted by Decision (D.) 86618 in Application (A.) 56758 (1976). It also holds highway contract and dump truck carrier permits under File T-115,508. Applicant seeks an in-lieu certificate authorizing it to extend its cement operations to include San Diego County.

Applicant currently has established its rates through Western Motor Tariff Bureau (WMTB) publications. It plans to establish rates for San Diego service in conformity with the WMTB's existing rates and charges.

Applicant has a modern fleet which includes 25 power units (three of which are dump trucks), six pneumatic and three bottom dump, cement-type trailers. Its balance sheet shows bank accounts of \$807,000 plus trade receivables of over \$200,000. Its total equity is nearly \$1.4 million, virtually all of which is current or retained earnings.

Applicant has applied to the Interstate Commerce Commission for interstate operating authority to transport building materials and fly ash, and expects to receive it within the next two months. The interstate authority would permit irregular route, common carrier operations in Arizona, California, Nevada, Utah, and New Mexico.

Applicant claims that it has received numerous requests from shippers to operate as a cement carrier in the San Diego area.

Appendix A of D.86618, supra, contains an alter-ego restriction limiting applicant's freedom when hiring subhaulers for the transportation of property for Randy Caillier, Kurt Caillier or Everall M. Caillier, Caillier Investment Corporation, Ann Equipment Rentals, A & A Ready Mix Company, or customers or suppliers of these individuals, companies, or corporations. Applicant alleges that Caillier Investment Corporation and Ann Equipment Rentals are no longer in business. Applicant further alleges that Everall M. Caillier has no interest in applicant. Kurt and Randy Caillier each own one half of applicant's stock. Kurt Caillier is the vice president and Randy Caillier is the secretary and chief financial officer of A & A Ready Mix Company. Neither Kurt Caillier nor Randy Caillier have any stock interest in A & A Ready Mix Company, and no shareholder of A & A Ready Mix Company has any interest in applicant. Applicant therefore requests that these restrictions be deleted from the in-lieu certificate being applied for in this application. However, in view of the fact that Kurt Caillier and Randy Caillier are each 50% stockholders of applicant and vice president and secretary, respectively, of A & A Ready Mix Company, there exists an affiliation between the applicant and A & A Ready Mix Company by reason of common management. This requires that an alter-ego restriction be placed on the in-lieu certificate being applied for. Accordingly, such a restriction will be added to Appendix A.

Notice of the filing of this application appeared in the Commission's Transportation Calendar on November 30, 1982. No protests have been received.

Findings of Fact

1. Public convenience and necessity require that applicant be authorized to operate as a common carrier of cement in San Diego County in addition to the counties it now serves.

2. The alter-ego restriction as presently contained in D.86618, supra, should be amended to delete Everall M. Caillier, Caillier Investment Corporation, and Ann Equipment Rentals.

3. Applicant is a California corporation.

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 has no reasonably foreseeable impact upon the energy efficiency of highway carriers.

Conclusions of Law

1. Applicant has demonstrated public convenience and necessity, and the application should be granted. A public hearing is not necessary.

2. The in-lieu certificate to be granted to applicant should include an alter-ego restriction against Kurt Caillier and Randy Caillier, individuals, and A & A Ready Mix Company, a corporation.

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. An in-lieu certificate of public convenience and necessity is granted to R & K Trucking, a California corporation, 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 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, 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, 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.86618, in A.56758. That certificate is revoked on the effective date of the tariff filings required by paragraph 2.b.

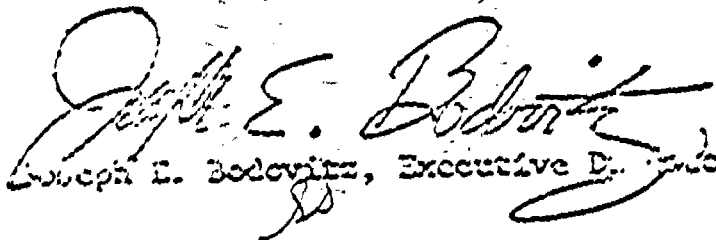
This order becomes effective 30 days from today.

Dated APR 20 1983, at San Francisco, California.

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

Commissioner Priscilla C. Grew, being necessarily absent, did not participate in the disposition of this proceeding.

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


Joseph E. Bodovitz, Executive Director

APPENDIX A

R & K TRUCKING
(A California Corporation)

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R & K Trucking, 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 Section 214.1 of the Public Utilities Code, from any and all points of origin to all points in the Counties of Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura subject to the following restrictions:

RESTRICTIONS:

1. Whenever R & K Trucking, a California Corporation, engages other carriers for the transportation of property of Randy Caillier and/or Kurt Caillier and/or A & A Ready Mix Company, R & K Trucking shall not pay such other carriers rates and charges less than the rates and charges published in tariffs filed with this Commission by R & K Trucking.
2. 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 94 076, Application 82-11-41.