

Decision No. 89805 DEC 19 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of TOM PUGLISE
EXCAVATING, INC., for a permit
as a dump truck carrier,
Oxnard. (File 372.70.)

Application No. 58197
(Filed July 6, 1978)

Robert F. Peterson, Jr., Attorney at Law, for
applicant.

James D. Martens, for California Dump Truck
Owners Association, protestant.

John T. Underund, for Transport Business
Service; Harry C. Phelan, Jr., for California
Asphalt Pavement Association; Danny D. Alls,
for himself; Walker Brown, for Walker Brown
Trucking Company; T. W. Anderson, for General
Portland, Inc.; and J. S. Shafer, Jr., for
California Carriers Association; interested
parties.

T. H. Peceimer, for the Commission staff.

O P I N I O N

Tom Puglise Excavating, Inc. requests a dump truck carrier
permit.

Public hearing was held before Administrative Law Judge Daly
on October 20, 1978 at Los Angeles and was submitted upon the receipt
of concurrent briefs since filed and considered.

Applicant's president and sole stockholder has operated an
excavating and earth hauling business in Ventura County for the past
ten years. Applicant was incorporated on December 5, 1977. Applicant's
principal place of business is located in Oxnard, California. It owns
and operates a 3-axle tractor and a 2-axle dump trailer. As of
October 1978 it indicated a net worth in the amount of \$30,404 and its
president indicated a personal net worth in the amount of \$400,000.

According to applicant's president its equipment would
primarily be used in its own excavating business, but when not so
engaged, would be available for public hauling.

He testified that despite frequent inquiries, he has been unable to find a dump truck permit available for sale. From his own experience as a licensed excavating contractor, he has had difficulty in obtaining dump truck carriers for certain jobs.

If the permit is issued, he has been assured by several dump truck brokers that they would be able to use applicant's service when its equipment is available.

Prior to engaging in the excavating business, applicant's president was a mechanic. He does all of the maintenance work on applicant's equipment, and the equipment has recently been checked and approved by the California Highway Patrol. He testified that the equipment will be operated in a safe manner; that it is covered by adequate liability insurance; and that it will not have an adverse effect upon the highways nor upon existing dump truck carriers.

Applicant introduced letters from Tri-County Truck Co. and Leal Corp., truck brokerage firms, which state that said companies have been unable to provide the necessary number of dump truck carriers required to meet the daily demand in Ventura County and that they would use applicant's service if the requested permit is issued.

The staff witness testified that during the months of May, June, July, August, and September 1978, 429 dump truck carrier transfer applications were filed with the Commission. The prices ranged from \$1,000 to \$5,500.

According to the staff witness most new dump truck operators choose to pay the prevailing price for an existing permit rather than face the expense of a hearing and the possible loss of a \$500 filing fee if the application is denied.

A representative of the California Asphalt Pavement Association, appearing in support of the application, testified that there has been a shortage of dump truck carriers for hauling asphalt not only in Ventura County, but statewide; that the industry bids jobs on the basis of what can be delivered, not on what can be produced; that at one time producers used their own equipment, but now 50 percent of the hauling is performed by for-hire carriers; and that because of

the demand, for-hire carriers in the greater Los Angeles area are charging 7 percent to 8 percent above the minimum rates for the hauling of asphalt.

The testimony of three dump truck operators was introduced by the California Dump Truck Owners Association in opposition to the application.

In brief, they testified that they presently hold dump truck permits; that they operate within the county of Ventura; and that because construction work is seasonal, there are many days during the year when they either do not work or must seek work outside of the county. On cross-examination, however, they admitted that during the busy summer months they have turned down jobs in Ventura County.

After consideration the Commission finds that:

1. Applicant is presently engaged in an excavating and earth hauling operation in Ventura County.

2. Applicant proposed to use its dump truck equipment primarily in its excavating business, but when not so engaged, applicant proposes to use such equipment as a for-hire carrier in Ventura County.

3. Applicant has been assured by two dump truck brokers that they would utilize applicant's equipment during high demand periods.

4. Although the demand for dump truck carrier is seasonal, there are times during the peak summer months when the existing dump truck operators serving the Ventura County area are unable to supply sufficient units of equipment to meet existing demand. During such periods some of the existing carriers, particularly in the greater Los Angeles area, are charging 7 percent to 8 percent higher than existing minimum rates.

5. Applicant's president and sole stockholder has had ten years of experience as a licensed contractor in the use and operation of dump trucks in Ventura County. He is also a journeyman mechanic with extensive experience in the maintenance and repair of heavy equipment.

6. Applicant has demonstrated by a preponderance of the evidence that:

- (a) It possesses sufficient operating knowledge and financial ability to initiate and continue the proposed operation.
- (b) Its equipment is presently being used on the public highways in Ventura County and its proposed future use will not endanger the safety of said highways or impair the condition or maintenance of them directly or indirectly.
- (c) Its proposed operation will not unnecessarily burden the public highways, is necessary to serve the public, and will not impair the ability of presently permitted dump truck carriers to provide adequate service at the lowest possible reasonable rates.
- (d) Applicant is a California corporation.

The Commission concludes that applicant should be granted a dump truck carrier permit authorizing operations within the county of Ventura. There is a need for applicant's proposed service, and in view of that present need the following order should be effective the date of signature.

O R D E R

IT IS ORDERED that the Executive Director shall issue a dump truck carrier permit to Tom Puglise Excavating, Inc. authorizing operations within the county of Ventura.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 19 day of DECEMBER, 1974.

Robert B. ...
President
William ...
Vernon L. ...
Charles D. ...
Clair J. ...
Commissioners