

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

THE APPLICATION OF RANDY)
JOHNSON, DBA A-1 DRAIN & SEPTIC)
CO., FOR EMERGENCY TEMPORARY)
AUTHORITY TO CONDUCT OPERATIONS) DOCKET NO. 92A-177BY-ETA
AS A CONTRACT CARRIER BY MOTOR)
VEHICLE FOR HIRE.)
- - - - -)

**COMMISSION ORDER GRANTING
EMERGENCY TEMPORARY AUTHORITY**

Mailed date: May 13, 1992
Adopted date: May 13, 1992

STATEMENT, FINDINGS, AND CONCLUSIONS

BY THE COMMISSION:

1. On April 30, 1992, Randy Johnson, doing business as A-1 Drain & Septic Co., filed Docket No. 92A-177BY-ETA for emergency temporary authority to conduct operations as a contract carrier by motor vehicle for hire for the transportation of sludge, from the facilities of Excel Corporation in the County of Morgan, State of Colorado to Sections 1 and 12 of Township 4 North, Range 58 West and to Section 7 of Township 4 North, Range 57 West. This application is restricted to providing service for only Excel Corporation.

2. An intervention opposing the application was filed on May 4, 1992 by Liquid Waste Management, Inc. (LWM).

3. By § 40-6-120, C.R.S., the application for emergency temporary authority is under consideration for a Commission order.

4. Section 40-6-120(1), C.R.S., authorizes the Commission to grant emergency temporary authority when there appears to be

". . . an emergency need to any point or within a territory having no carrier service capable of meeting such need."

5. The support filed on behalf of this application indicates that the supporting shipper, Excel, is located in the County of Morgan, State of Colorado. Excel has a need to have its sludge transported to agricultural areas in northeast Colorado. Excel further states that it is now producing product and must have the sludge removed in order to keep the plant functioning and operational. The intervention of LWM states that it has been providing service to Excel until recently. It has transported the sludge to points outside Morgan County. Additionally, LWM states that Morgan County just recently adopted rules regarding the disposal of sludge on farm land in the County. LWM will obtain the requisite permits from the County within a few weeks.

6. Apparently the Applicant is the only company authorized by the Morgan County Health Department to dispose of sludge in Morgan County. The intervenor, although holding proper PUC authority, presently does not have the health department permits. It is not clear from the record whether the sludge, due to contractual or other circumstances, must be disposed of in Morgan County. In order to avoid a situation where Excel may be forced to curtail or cease operations, the Commission will grant a 15-day emergency authority.

7. The Commission finds due to the facts stated in paragraph (5) and (6) above, there is an emergency need for additional transportation services. The Commission will grant the application.

8. The Applicant has adequate equipment and financial resources to begin immediate service within the scope of the authority sought and is willing, ready, and able to operate under all Commission rules and regulations governing carriers by motor vehicle.

9. This application for emergency temporary authority is in the public interest and should be granted.

10. The Applicant is strongly advised that the granting of an emergency temporary authority makes no presumption that permanent authority will be granted.

THEREFORE THE COMMISSION ORDERS THAT:

1. Randy Johnson, doing business as A-1 Drain & Septic Co., is granted emergency temporary authority to conduct operations as

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a contract carrier for a period of 15 days commencing from the mailed date of this Order, with authority as set forth in the attached appendix.

2. Randy Johnson, doing business as A-1 Drain & Septic Co.,

shall not commence operations until all requirements have been met and notice in writing has been received from the Commission that the Applicant is in compliance and may begin service.

3. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the Commission mails or serves this decision.

4. This Order is effective on its date of mailing.

ADOPTED IN OPEN MEETING on May 13, 1992

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners

Commissioner Nakarado Specially Concurring.

I concur with the decision to grant the emergency temporary authority, based on the facts as presented by the Applicant, which I must assume are true. Cf. Rule 11, PUC Rules of Practice and Procedure, 4 Code of Colorado Regulation 723-1. I write separately, however, because I find it unfortunate that the Commission's Rules of Practice and Procedure do not have a mechanism for a quick hearing before an administrative law judge in this type of situation. The facts appear to be sharply in dispute, and we have no means to quickly resolve the disputed facts.

ORDER-ER

Appendix A
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Decision No. C92-643
Docket No. 92A-177BY-ETA
May 13, 1992

Transportation of sludge

from the facilities of Excel Corporation in the County of Morgan,
State of Colorado to Sections 1 and 12 of Township 4 North, Range
58 West and to Section 7 of Township 4 North, Range 57 West.

Restriction: This permit is restricted to providing service for only
Excel Corporation.

ORDER-ER

APPLICANT:

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