

**ORIGINAL**Decision No. 68434

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of  
 ROBERT L. TONN dba KERMEN CEMENT  
 TRANSPORT, of Fresno, California,  
 for a permit to operate as a Cement  
 Contract Carrier (Application No.  
 10-9751-CC), San Andreas, Kerman,  
 et al. (File No. T--77,538).

)  
 Application No. 46128  
 (Filed January 2, 1964)

William H. Kessler, for applicant.  
Raymond A. Greene, Jr., for Miles & Sons Truck-  
 ing Service, Inc., Rock Transport, Inc.,  
 Universal Transport System, Inc., Applegate  
 Drayage Co., James J. Trabuco, for Southern  
 Pacific Company, E. G. Jones, for Kaiser  
 Cement & Gypsum Corp., protestants.

Eugene A. Feise, for Calaveras Cement Co.,  
Walter G. Herrigil, for Ideal Cement Co.,  
 Interested parties.

H. L. Farmer, for the Commission staff.

O P I N I O N

Robert L. Tonn requests a permit to operate as a cement contract carrier.

A public hearing was held at San Francisco before Examiner Daly on October 27, 1964, and the matter was submitted.

Applicant owns and operates one tractor and two bottom, hopper-type trailers. As of January 2, 1964, he indicated a net worth in the amount of \$11,790. Applicant does not propose to transport C.O.D. shipments subject to General Order 84 nor to engage the service of subhaulers.

Applicant acquired his equipment from N. Volanti in October 1963. Mr. Volanti owns and operates a cement business in Kerman, California and prior to October 1963 used the equipment to transport his cement from the plants of Calaveras Cement Company,

Riverside Cement Company and Ideal Cement Company to his own place of business in Kerman. According to applicant, the sale of the equipment also included a commitment by Mr. Volanti that applicant's service would be used for his future cement transportation needs.

Applicant immediately commenced transporting the shipments of Mr. Volanti before obtaining any operating authority. He testified that he was under the impression that no specific authority was required until the new legislation relating to cement carriers became effective. His application for a cement contract carrier permit was filed on January 2, 1964. When informed that he was operating without proper authority, applicant testified that he discontinued such operations. He thereupon applied for a highway contract carrier permit which was issued on June 16, 1964. Until September 1964, applicant has engaged in the transportation of gypsum and fertilizer. In the past month applicant has leased his equipment to Martin Ready Mix Trucking Company.

Mr. Volanti, by letter (Exhibit 1), indicated that if the requested permit were issued, he would utilize the service of applicant. The traffic manager for Calaveras Cement Company testified that his company would utilize the service of applicant on all of Mr. Volanti's shipments.

A representative of Universal Transportation System, Inc. testified that his company had sufficient equipment and facilities to provide service to the Kerman area. He was of the opinion that the granting of additional permits would result in a diversion of traffic and thus have an adverse effect upon his company's operations.

After consideration the Commission finds that applicant has failed to justify the granting of the requested permit.

ORDER

IT IS ORDERED that Application No. 46128 is hereby denied.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 5<sup>th</sup> day of JANUARY, 1965.

Frederick B. Holbrook  
 President

John E. Mitchell

George H. Crover

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 Commissioners

*I dissent and my reasons shall be set forth by separate opinion.*  
*William W. Bennett*

Filed 11:11 AM 1/6/65.

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BENNETT, William M., Commissioner, Dissenting Opinion:

I dissent to the majority opinion herein which denies the requested authority. While granting the great power which this Commission has to grant or withhold permits, nonetheless when it does deny, it should be supported by evidence of record and the reasons for denial should be set forth. Here the Commission, with but scant information, advises this applicant that it "has failed to justify the granting of the requested permit." The reasons for denial are omitted entirely and thus this applicant - as well as all others - are at a complete loss to know how and in what manner they may make themselves eligible for operating authority the Legislature has created.

Relevant to this decision are my views set forth in the Application of Kenneth D. Francisco, et al., Dec. No. 68397, dated December 22, 1964. Of course, it is understood that the specifics of my dissent as to pertain particularly to the seven applications considered in that decision are to be disregarded for purposes of this dissent. Otherwise, all that I have said in the Application of Kenneth D. Francisco, et al., is pertinent and constitute additional reasons for dissenting in the instant case.

  
William M. Bennett  
Commissioner

San Francisco, California  
January 6, 1965.