

ORIGINAL

Decision No. 68747

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of LEONE ENTERPRISES, INC.
to operate as a cement carrier from any
and all points of origin to any and all
destinations within the Counties of
Alameda and Contra Costa.

Application No. 46173

R. Bruce Hoffe for applicant.
Marshall Berol for Miles & Sons Trucking Service, Rock
Transport, Amaral Trucking, and Universal Trucking
System, protestants.
E. J. Bertana for Pacific Cement Aggregates, Inc.;
E. G. Jones for Kaiser Cement & Gypsum Corp.,
interested parties.
Donald J. Harvey for the Commission Staff.

O P I N I O N

Leone Enterprises, Inc. requests authority to operate as a cement contract carrier to, from and between all points within the Counties of Alameda and Contra Costa.

A public hearing was held before Examiner Daly on January 28, 1965, at San Francisco.

Mr. Robert J. Leone, president of applicant, commenced operations as a radial carrier in 1961. At that time he also owned and operated the Contra Costa Ready Mix Company, which he subsequently sold and is now employed by said company as a salesman.

Mr. Leone owns 5 percent of the outstanding stock of applicant, his children own 90 percent of the outstanding stock and his attorney owns the remaining 5 percent.

Applicant's office and terminal is located in Berkeley, California. It owns and operates eighteen units of equipment, which consists of 4 power vehicles and 16 trailer vehicles, including dump,

cement hopper, bottom dump, end dump and flat bed units. As of December 31, 1964 applicant indicated a net worth in the amount of \$39,851.26.

The record discloses that applicant mailed an application to this Commission on December 31, 1963, requesting a grandfather right pursuant to recent legislation. Because the application had not been mailed one day sooner the application was rejected and the present application was subsequently filed.

Mr. Leone testified that applicant was utilized to perform the transportation service for the Contra Costa Ready Mix Company. The radial permit under which applicant operated, however, was not specifically limited to the transportation of cement and included the right to transport other specified commodities. According to Mr. Leone the service performed by applicant, therefore, was not limited to the demands of Contra Costa Ready Mix Company neither during, nor after the time that he owned said company. He further testified that although he was aware of the grandfather legislation and that applicant had been formally advised by the Commission of the necessary procedure to be followed in securing its new authority, he did not fully appreciate the legal significance and importance of filing the application before December 31, 1963.

Exhibits 4 and 5 consist of shipping documents reflecting operations in the proposed counties during December, 1962 and January, 1963.

Protestants introduced evidence relating to the scope of their present operations. They contend that granting of the permit would result in a diversion of traffic and have an adverse effect upon the existing carriers.

After consideration the Commission finds:

1. Applicant possesses the ability and financial responsibility to provide the proposed operations.
2. The proposed operation will not endanger the safety of the public nor interfere with the public use of the highways or impair the condition or maintenance of them directly or indirectly.
3. The proposed operation will not impair the service of previously certificated cement carriers or permitted cement contract carriers.
4. Applicant is a fit and proper person to receive such permit to operate as a cement contract carrier.

The applicant's president being employed by Contra Costa Ready Mix Company, the permit to be issued will contain an appropriate restriction upon the use of subhaulers.

O R D E R

IT IS ORDERED that the Acting Secretary of the Commission shall issue a cement contract carrier permit to Leone Enterprises, Inc. authorizing transportation to and between all points in Alameda and Contra Costa Counties and containing the following restriction:

"Whenever Leone Enterprises, Inc. engages any other carrier for the transportation of property of Contra Costa Ready Mix Company or the customers or suppliers of Contra Costa Ready Mix Company, Leone Enterprises, Inc. shall not pay such carrier less

than 100% of the minimum rates and charges established by the Commission for the transportation actually performed by such other carrier."

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

Dated at San Francisco, California, this 17th day of March, 1965.

Fredrick B. Hallock
President

John Mitchell

George J. Hoover

Augustus

William L. Bennett
Commissioners