

**ORIGINAL**Decision No. 69014

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
DAVID L. McNEILLIS and HUGH T. FORBIS,  
JR., dba FORBIS TRUCKING CO., of San  
Dimas, California, for a permit to  
operate as a Cement Contract Carrier  
(Application No. 19-57264-CC), 50 mile  
radius of San Diego. (File No.  
T-77,420).

Application No. 46135  
(Filed January 8, 1964)

In the Matter of the Application of  
HAROLD L. HARRISON, JR., an individ-  
ual, of Rosemead, California, for a  
permit to operate as a cement contract  
carrier, (Application No. 19-57312-CC),  
within 50 mile radius of San Diego,  
(File No. T-77,491).

Application No. 46160  
(Filed January 22, 1964)

In the Matter of the Application of  
CHARLES F. BAIRD dba C & J BAIRD, of  
San Diego, California, for a permit  
to operate as a cement contract car-  
rier, (Application No. 37-5098-CC),  
within 50 mile radius of San Diego,  
(File No. T-77,678).

Application No. 46161  
(Filed January 22, 1964)

In the Matter of the Application of  
CLIFFORD JAMES EMDE dba CLIFF EMDE  
TRUCKING, of National City,  
California, for a permit to operate  
as a cement contract carrier, (Appli-  
cation No. 37-5095-CC), within 50  
mile radius of San Diego, (File  
No. T-77,558).

Application No. 46162  
(Filed January 22, 1964)

In the Matter of the Application of  
WILLIAM E. MC AFEE, an individual,  
of El Cajon, California, for a  
permit to operate as a cement con-  
tract carrier, (Application No.  
37-5106-CC), within 50 mile radius  
of San Diego, (File No. T-77,716).

Application No. 46178  
(Filed January 20, 1964)

In the Matter of the Application of FRED L. HOSAR, an individual, of Lakeside, California, for a permit to operate as a cement contract carrier, (Application No. 37-5103-CC), within 50 mile radius of San Diego, (File No. T-77,718).

Application No. 46179  
(Filed January 30, 1964)

In the Matter of the Application of GEORGE D. ENGLANDER, an individual, of San Diego, for a permit to operate as a Cement Contract Carrier (Appl. No. 37-5131-CC), within 50 mile radius of City of San Diego, (File No. T-78,194).

Application No. 46857  
(Filed March 30, 1964)

In the Matter of the Application of FORREST W. WEBB, an individual, of San Diego, for a permit to operate as a Cement Contract Carrier (Appl. No. 37-5134-CC), within 50 mile radius of City of San Diego, (File No. T-78,198).

Application No. 46858  
(Filed March 30, 1964)

In the Matter of the Application of CHARLES R. STURM, an individual, of Santee, for a permit to operate as a Cement Contract Carrier (Appl. No. 37-5135-CC), within 50 mile radius of City of San Diego, (File No. T-77,679).

Application No. 46859  
(Filed April 1, 1964)

Dannemeyer & Gustaveson, by William E. Dannemeyer, for applicants in Applications Nos. 46160, 46161, 46162, 46178, 46179, 46858 and 46859.

Russell & Schureman, by R. Y. Schureman, for Binswanger Trucking, Matich Transportation Co., Daniel Lohnes Trucking Co., Valley Transportation Co., Phillips Trucking and More Truck Lines; Wallace K. Downey, for California Portland Cement Co.; Lauren M. Wright, for American Cement Corporation; David K. Graham, for Kaiser Cement and Gypsum Corporation; protestants in all applications.

Waldo A. Gillette and Joseph T. Enright, for Monolith Portland Cement Company; George B. Shannon, for Southwestern Portland Cement Company; E. J. Langhofer, for San Diego Chamber of Commerce; interested parties in all applications.

Donald J. Harvey, for the Commission staff.

O P I N I O N

Applicants in these various proceedings are individuals and (in one application) a partnership, operating as city carriers and radial highway common carriers. By their respective applications they seek permits to operate as cement contract carriers, as defined in Section 3519 of the Public Utilities Code, within a 50-mile radius of San Diego.

Public hearing of these matters was held on a consolidated record before Examiner Bishop at San Diego on November 18 and 19, 1964. Applicants David L. McNellis and Hugh T. Forbis (Application No. 46135) and George D. Englander (Application No. 46857) did not appear at the hearing nor did any persons appear on their behalf. Counsel for protesting carriers and for California Portland Cement Company, also a protestant, moved that these two applications be dismissed for lack of prosecution.

Each of the remaining seven applicants testified in support of the relief sought by him.<sup>1/</sup> The record shows that prior to 1964 applicants Baird, Emde, McAfee and Hosar were employed as truck drivers for San Diego Cement Company. By the end of that year said company had been acquired by Consolidated Rock Company and the name of the former had been changed to San Diego Consolidated Company. Applicants Webb and Sturm had, prior to 1964, been employed as truck drivers by other concerns. Applicant Harrison had not had truck operating experience prior to that year.

---

<sup>1/</sup> The vice president of Harrison-Nichols Company and Harrison Trucking Company, affiliated corporations, also testified on behalf of said applicants.

With the change of ownership and name, San Diego Consolidated Company (Consolidated) decided to discontinue the performance of its cement hauling and to turn that over to a for-hire carrier. It sold its hopper bottom trailers to Harrison Trucking Company, which engages in the transportation of rock and sand as an overlying carrier, and arranged to employ Harrison-Nichols Company as an overlying carrier in the transportation of its cement. The latter company owns no vehicles, but possesses a so-called "grandfather" cement carrier certificate, as well as other operating authority from this Commission.

Consolidated disposed of its tractors through a dealer, from whom each of the above-named seven applicants purchased one of the vehicles in question. Applicant Emde later purchased a second tractor. When these purchases were made, applicants were informed that they could transport Consolidated's cement, subhauling for Harrison-Nichols and paying the latter a commission of 5 percent of their gross revenues. These arrangements further provided that applicants could lease the cement trailers from Harrison Trucking, paying the latter a rental of 25 percent of their gross revenues.

Five of this group of applicants filed their applications for cement contract carrier permits in January 1964; the other two filed in March and April of that year. The record shows that all seven applicants have been transporting cement regularly since that time for Harrison-Nichols, leasing trailers from Harrison Trucking and paying to those companies the above-stated commission and rental percentages, respectively. The movements of cement have been principally from Consolidated's railhead facility in San Diego to its batching plants in Mission Valley and Chula Vista. The

first of these hauls is entirely within the City of San Diego, while the second is intercity movement. Some of the applicants have also transported occasionally loads of cement to these batching plants from Colton and Victorville. These latter hauls substantially exceed in length the 50-mile radius of San Diego specified in the applications here in issue.

The record further shows that the aforesaid seven applicants also transport rock, sand and gravel as subhaulers for the overlying carriers. The volume of cement traffic is much less than that of the aggregates; it is divided equally among the seven applicants. Under this arrangement each applicant hauls cement only one week in from five to seven weeks.

Evidence adduced through witnesses of the protesting highway carriers and the protesting cement companies was designed to show that there are already sufficient cement contract carriers operating within the area embraced by the applications in question under appropriate authorization from the Commission to accommodate the needs of the traffic. They asserted that the authorization of additional carriers, as herein sought, would impair the stability of the carriers already serving the area. Counsel for protestants argued, *inter alia*, that, by their willful violation of the law prohibiting for-hire operations without Commission authorization, applicants had demonstrated that they were not fit persons to receive the permits herein sought.

The evidence in this proceeding is similar in many respects to that in Applications Nos. 46856 and 46885, in which a decision is being issued today. The applicants would lease trailers from an affiliate of Harrison-Nichols Company for 25% of the gross revenues and would operate as subhaulers for Harrison-

Nichols Company, which would be paid an additional 5% of the gross revenues. As was pointed out in the Francisco case (Application No. 46118, Decision No. 68397, decided December 22, 1964), this type of arrangement gives the "overlying carrier" (Harrison-Nichols Company) a competitive advantage over other cement carriers whose use of subhaulers is, in contrast, on a reasonable basis.

We find that:

1. The granting of Applications Nos. 46160, 46161, 46162, 46178, 46179, 46858 and 46859 for cement contract carrier permits would impair the service of previously certificated cement carriers and permitted cement contract carriers.

2. Applicants in Applications Nos. 46135 and 46857 failed to appear, either in person or through counsel, at the duly noticed hearing scheduled in said applications, or to take any other steps in the prosecution of their requests for cement carrier permits.

We conclude that:

1. Applications Nos. 46160, 46161, 46162, 46178, 46179, 46858 and 46859 should be denied.

2. The motion of protesting carriers and of California Portland Cement Company that Applications Nos. 46135 and 46857 be dismissed for lack of prosecution should be granted.

O R D E R

IT IS ORDERED that:

1. Applications Nos. 46135 and 46857 are dismissed.

2. Applications Nos. 46160, 46161, 46162, 46178, 46179, 46858 and 46859 are denied.

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

Dated at SAN FRANCISCO, California, this 4<sup>th</sup> day of May, 1965.

Fredrick B. Hallock  
President

George E. ...

George E. ...

---

Commissioners

I Concur:  
 Argatan  
 I would grant rather  
 than deny.  
 William L. ...

Decision No. 69014

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of DAVID L. McNELLIS and HUGH T. FORBIS, JR., dba FORBIS TRUCKING CO., of San Dimas, California, for a permit to operate as a Cement Contract Carrier (Application No. 19-57264-CC), 50 mile radius of San Diego. (File No. T-77,420).

Application No. 46135  
(Filed January 8, 1964)

In the Matter of the Application of HAROLD L. HARRISON, JR., an individual, of Rosemead, California, for a permit to operate as a cement contract carrier, (Application No. 19-57312-CC), within 50 mile radius of San Diego, (File No. T-77-491).

Application No. 46160  
(Filed January 22, 1964)

In the Matter of the Application of CHARLES F. BAIRD, dba C & J BAIRD, of San Diego, California, for a permit to operate as a cement contract carrier, (Application No. 37-5093-CC), within 50 mile radius of San Diego, (File No. T-77,678).

Application No. 46161  
(Filed January 22, 1964)

In the Matter of the Application of CLIFFORD JAMES EMDE, dba CLIFF EMDE TRUCKING, of National City, California, for a permit to operate as a cement contract carrier, (Application No. 37-5095-CC), within 50 mile radius of San Diego, (File No. T-77,558).

Application No. 46162  
(Filed January 22, 1964)

In the Matter of the Application of WILLIAM E. McAFEE, an individual, of El Cajon, California, for a permit to operate as a cement contract carrier, (Application No. 37-5106-CC), within 50 mile radius of San Diego, (File No. T-77,716).

Application No. 46178  
(Filed January 20, 1964)

In the Matter of the Application of FRED L. HOSAR, an individual, of Lakeside, California, for a permit to operate as a cement contract carrier, (Application No. 37-5103-CC), within 50 mile radius of San Diego, (File No. T-77,718).

Application No. 46179  
(Filed January 30, 1964)



In the Matter of the Application of GEORGE D. ENGLANDER, an individual, of San Diego, for a permit to operate as a Cement Contract Carrier (Application No. 37-5131-CC), within 50 mile radius of City of San Diego, (File No. T-78,194).

) Application No. 46857  
(Filed March 30, 1964

In the Matter of the Application of FORREST W. WEBB, an individual, of San Diego, for a permit to operate as a Cement Contract Carrier (Application No. 37-5134-CC), within 50 mile radius of City of San Diego, (File No. T-78,193).

) Application No. 46858  
(Filed March 30, 1964)

In the Matter of the Application of CHARLES R. STURM, an individual, of Santee, for a permit to operate as a Cement Contract Carrier (Application No. 37-5135-CC), within 50 mile radius of City of San Diego, (File No. T-77,679).

) Application No. 46859  
(Filed April 1, 1964)

COMMISSIONER A. W. GATOV CONCURRING SEPARATELY:

I agree with the decision of the Commission. Inasmuch as the reason for my decision differs in part from the reasoning of the principal opinion, my reasoning follows:

Section 3572 of the Public Utilities Code enjoins, "Before a permit is issued, the Commission shall require that the applicant establish financial responsibility." \* \* \* \* "If the Commission finds that the applicant possesses the required financial responsibility to perform the operations proposed, it shall issue a permit . . . ."

The proposed method of operation provides that the applicants who prosecuted their applications would pay the overlying carrier, Harrison-Nichols, 5 per cent of their gross revenues and lease cement trailers from Harrison Trucking for a rental of 25 per cent of their gross revenues. Briefly, 30 per cent of applicants' gross revenue is obligated to get the cement hauling.

I feel this percentage is unjustifiably high for the service and equipment involved, and I could not find an applicant volunteering such an arrangement to possess financial responsibility.

  
A. W. Catov, Commissioner

Dated: San Francisco, California  
May 6, 1965