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Decision No. 69015

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of W. R. COWAN, JR., an individual, of Covina, for a permit to operate as a Cement Contract Carrier (Appl. No. 10-57501-CC), 150 mile radius of Irwindale, (File No. T-23,127).

Application No. 46856  
(Filed March 23, 1964)

In the matter of the application of O. B. VINEYARD, an individual, of Monrovia, for a permit to operate as a Cement Contract Carrier (Application No. 19-57502-CC), within 150 mi radius of Irwindale, (File No. T-58,025).

Application No. 46885  
(Filed March 23, 1964)

William E. Dannemeyer, for O. B. Vineyard and W. R. Cowan, applicants.  
Wallace K. Downey, for California Portland Cement Company; Russell & Schureman by Theodore W. Russell, for Max Binswanger Trucking, Matich Transportation Co., Daniel Lohnes Trucking Co., Valley Transportation Co., Phillips Trucking, and More Truck Lines; O'Melveny & Myers, by Lauren M. Wright, for American Cement Corporation, protestants.  
C. R. Boyer and G. B. Shannon, for Southwestern Portland Cement Company; and David K. Graham and S. A. Moore, by David K. Graham, for Kaiser Cement and Gypsum Corporation, interested parties.

O P I N I O N

Walter Raymond Cowan, Jr. and Osborne B. Vineyard request permits to operate as cement contract carriers.

A public hearing was held at Los Angeles on September 10, and 11, 1964, and the matter submitted. The protestants' evidence was to be the same as to both applicants, and the matters were consolidated for the purpose of receiving this evidence.

A. 46856, A. 46885 led

Applicant Cowan commenced hauling cement as a subhauler in April, 1964. Applicant Vineyard commenced hauling cement as a subhauler in March, 1964. Harrison-Nichols Company is the prime carrier as to both applicants. In August, 1964 the cement company refused to load applicants' equipment as they did not have certificated or permitted authority to haul cement.

As of January 2, 1964, Cowan indicated a net worth in the amount of \$77,090.74. Vineyard, as of March 17, 1964, indicated a net worth of \$41,594.

The Legislature, in Sections 1068.1 and 3623 of the Public Utilities Code, has addressed itself to the special problem of transportation of cement and has given the Commission broad authority to stabilize that portion of the transportation industry. Accordingly, the Commission should not approve applications for cement contract carrier permits without analyzing the effect of such transportation upon the operations of those who have already been licensed or who will qualify under the "grandfather" provisions of the code. In the Francisco case (Application No. 46118, Decision No. 68397, decided December 22, 1964), the Commission reviewed the statutory standards which must be met by applicants for cement contract carrier permits<sup>1/</sup> and pointed out that even if all these conditions are met, Public Utilities Code Section 3623 does not make the granting of a permit mandatory but rather leaves its issuance to the discretion of the Commission.

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<sup>1/</sup> Those standards are: (1) ability; (2) reasonable financial responsibility; (3) protection of the safety of the public; (4) protection from interference with public use of the public highways; (5) protection of the condition and maintenance of the public highways; (6) protection of the service of previously authorized cement haulers; and (7) that the applicant be a fit and proper person to operate as a cement contract carrier.

Protestants produced evidence to show that there is an overabundance of available cement haulers represented by those seeking "grandfather" rights; that any new entry would dilute this traffic; that therefore rates for cement hauling would tend to be pushed upward; that the public highways would be overburdened; and that if subhaulers can operate economically at rates less than the minimum, then said minimum rates are excessive. It was also shown that both applicants transported cement for compensation on the public highways without the necessary authority from this Commission.

So far as their cement operations are concerned, applicants are alike in that they both propose to operate exclusively as subhaulers for Harrison-Nichols Company if granted the sought operating authority. They are both directly connected with Harrison-Nichols Company at the present time, in one way or another.

The evidence in this proceeding shows that Harrison-Nichols Company through the use of both of these subhauler applicants (who would operate only by hauling trailers leased from Harrison-Nichols Company, or its affiliate, for 25 percent of the minimum rates plus 5 percent of the minimum rates for services rendered by Harrison-Nichols Company to applicants) would gain an unreasonable competitive advantage over other cement carriers whose use of subhaulers is, in contract, on a reasonable basis. Such a competitive advantage would impair the service of those cement carriers and cement contract carriers already authorized. The evidence in this respect is similar to that in the Francisco case, supra, in which the applications for cement permits were denied.

A. 46856, A. 46885 led\*

After consideration the Commission finds as a fact that the granting of the applications of W. R. Cowan, Jr. and O. B. Vineyard for cement contract carrier permits would impair the service of previously certificated cement carriers and permitted cement contract carriers.

Based on the finding of fact set forth above, the Commission concludes that the applications for cement contract carrier permits filed by W. R. Cowan, Jr. and O. B. Vineyard should be denied.

At the hearing in these matters protestants offered evidence which, if believed, would have been adverse to applicants' cause. The presiding examiner sustained a motion by applicants to exclude this evidence. Because the evidence, if admitted, would have been adverse to applicants, there is no need to determine the correctness of the examiner's ruling.

ORDER

IT IS ORDERED that Applications Nos. 46856 and 46885 are denied.

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

Dated at San Francisco, California, this 4th day of May, 1965.

Frederick B. Hallock  
President  
George C. Hoover  
Commissioners

*I Concur  
Rogator  
I would grant the  
allowance requested.  
J. L. ...*

Commissioners

Filed 4:40 PM 5/6/65

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Application No. 46856  
(Filed March 23, 1964)

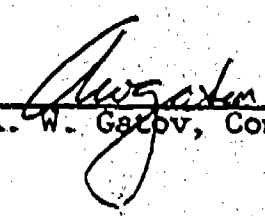
In the Matter of the Application of O. B. VINEYARD, an individual, of Monrovia, for a permit to operate as a Cement Contract Carrier (Application No. 19-57502-CC), within 50 mile radius of Irwindale, (File No. T-58,025).

Application No. 46885  
(Filed March 23, 1964)

COMMISSIONER A. W. GATOV CONCURRING SEPARATELY:

As indicated in Decision No. 69014 dated May 4, 1965, for Applications Nos. 46160, 46161, 46162, 46178, 46179, 46858 and 46859, I do not find that these applicants have established financial responsibility required by Section 3572 of the Public Utilities Code.

In this application, applicants propose to haul cement as subhaulers exclusively for the overlying carrier and their affiliate, who presumably will contract to haul at the prescribed minimum rates.

  
A. W. Gatov, Commissioner

Dated: San Francisco, California  
May 6, 1965