

Decision No. 69081**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of ROBERT F. TAYLOR and FRANK J. KOCMAN, a partnership doing business as M & T TRANSPORTATION CO., of Los Alamos, for a permit to operate as a Cement Contract Carrier, (Application No. 30-4225-CC), Orange, et al, Counties (File No. T-77,314).

Application No. 46890
(Filed July 30, 1964)

Murchison & Stebbins, by Donald Murchison,
for applicant.

James J. Trabucco, for Southern Pacific Company and Pacific Electric Railway Company; Lauren M. Wright, for American Cement Corporation; Wallace K. Downey, for California Portland Cement Company; and R. Y. Schureman, for Max Binswanger Trucking, Matich Transportation Co., Daniel Lohnes Trucking Co., Valley Transportation Co., Phillips Trucking and More Truck Lines; protestants.

Harvey H. Lowthian, Jr., for Kaiser Cement & Gypsum Corporation; George B. Shannon, for Southwestern Portland Cement Company; Joseph T. Enright; and Waldo A. Gillette and Eugene R. Rhodes, for Monolith Portland Cement Company; interested parties.

Donald J. Harvey, for the Commission staff.

O P I N I O N

This application was heard and submitted before Examiner DeWolf at Los Angeles on February 10, 1965, subject to the receipt and service on all parties of late-filed exhibits Nos. 2, 3 and 4, which have been filed. Copies of the application and the notice of hearing were served in accordance with the Commission's procedural rules.

Applicant's evidence consists of the testimony of Robert F. Taylor and Exhibits Nos. 2 through 4 offered by him. Exhibit No. 1 was not admitted in evidence for the reason that it is not a complete and accurate financial statement. Late-filed exhibit No. 2 is a financial statement of Robert F. Taylor, doing business as M & T Transportation Co., dated September 1, 1964. Late-filed exhibit No. 3 is an affidavit of Frank J. Kocman as to dissolution of the partnership of the applicants and division of assets. Late-filed exhibit No. 4 is a financial statement of M & T Transportation Co., a partnership, dated August 31, 1964.

The testimony and exhibits disclose evidence of a dissolution of applicant partnership, a division of assets and liabilities and a transfer of all permit rights to the substituted applicant, Robert F. Taylor. Counsel for applicant requested leave to amend the application and to substitute Robert F. Taylor, doing business as M & T Transportation Co., as the sole applicant.

Robert F. Taylor testified that permit No. 30-3966, in File No. 75,823, was issued July 2, 1963, and reissued January 6, 1964, to Charles C. Manley and R. F. Taylor, a partnership, known as M & T Transportation Co.; that these permits all authorized the hauling of property transported in dump truck equipment within a 50 or 150-mile radius of applicants' location, and included cement; that Manley withdrew from the partnership in November, 1963, at which time Kocman became a partner. The witness

testified that on or about the 26th day of May, 1964, an amended permit was issued which excluded the transportation of cement and thereafter applicants ceased hauling cement. Witness Taylor testified that he would serve the same parties and cement plants for whom he and his former partner were hauling prior to receipt of the last amended permit. He testified that he desired to operate in Orange, Los Angeles, Riverside and San Bernardino counties, in the same manner the partnership had previously operated, and that the previous customers were Graham Bros., Blue Diamond, Triangle Rock, Anaheim Ready-Mix, and Permanente. The application and testimony disclose that Anaheim Ready-Mix is controlled by Frank J. Kocman. Taylor requested that he be substituted as sole owner of the permits and operator of the business.

Late-filed exhibit No. 2 is the financial statement of Robert F. Taylor, doing business as M & T Transportation Co., dated September 1, 1964, and discloses assets as follows:

Cash and Accounts Receivable		\$ 9,664.56
Trucks & Trailers (at cost)	\$39,544.68	
Home & Furnishings	43,000.00	
	<u>\$82,544.68</u>	
Less Reserve for Depreciation	<u>3,430.92</u>	79,113.76
Other Assets		<u>10,944.75</u>
Total Assets		\$99,723.07

Exhibit No. 3 is the affidavit of the former partner Kocman, and it confirms the assignment to Robert F. Taylor of one 1963 Peterbilt Tractor and two cement bottom dump trailers, one 1964 Peterbilt Tractor and two flat bed trailers, and one 1949 Autocar Tractor.

Counsel for applicant stated that the application is not based on the "grandfather" provisions of Section 3623 of the Public Utilities Code.

No shipper witnesses were called to testify in support of the application.

Ten protestants appeared and opposed the application. Three interested parties appeared and the Commission staff entered an appearance.

The testimony of two witnesses who testified for some of the protestants was adopted by the remaining protestants. They testified that the applicant served the same shippers and traversed the same routes and territory served by protestants; that the protestants have the capacity and the equipment and the desire to perform the service which is here proposed; that the present shippers in the cement industry are not in need of any additional service; and that the proposed operation would diminish the traffic now transported by protestant carriers.

The Commission staff representative requested the Commission to take official notice of the fact that approximately 79 applicants filed applications for cement authority for Orange County, 104 applicants for Los Angeles County, 56 applicants for Riverside County, and 70 applicants for San Bernardino County, and that approximately all of these applicants were granted authority to transport cement under "grandfather rights".

Applicant has not produced any evidence in support of his contentions other than his own opinions. The provisions of Sections 3620 and 3625 of the Public Utilities Code have not been complied with.

Applicant has not demonstrated and the evidence does not disclose that he possesses the ability and financial responsibility sufficient to initiate the proposed operations as a cement contract carrier.

The evidence of protestants establishes that issuance of a permit to applicant would take traffic away from and impair the service of previously certificated cement carriers and permitted cement contract carriers.

The application of Robert F. Taylor for a cement contract carrier permit should be denied.

ORDER

IT IS ORDERED that the amended application of Robert F. Taylor for a cement contract carrier permit is denied.

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

Los Angeles
Dated at _____, California, this 18th day of May, 1965.

Fredrick B. Hallock
President
George F. Trover
Alvada
Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.