

ied

ORIGINAL

Decision No. 69669

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of }
CLOVERLEAF TRUCKING, INC., a corpora- }
tion, of San Rafael, for a permit to }
operate as a Cement Contract Carrier }
(Appl. No. 21-865-CC), Alameda, }
Calaveras, et al, Counties, (File No. }
T-78,864). }

Application No. 46860

Vaughan, Paul & Lyons, by John G. Lyons, for applicant.
Raymond A. Greene, Jr., Handler, Baker & Greene, for
Universal Transport System, Inc., and Rock Transport
Inc.; Elwyn G. Jones, for Kaiser Cement & Gypsum
Corporation; Berol, Loughran & Greernaert, by Marshall
G. Berol, for Miles & Sons Trucking Service and Applegate
Drayage Company; James J. Trabucco, for Southern Pacific
Company; Walter G. Herrisel, for Ideal Cement Company,
E. J. Bertana, for himself; Eugene A. Feise, for
Calaveras Cement Co., interested parties.
H. L. Farmer, D. J. Harvey and Douglas C. Quinlan, for
the Commission staff.

OPINION ON REHEARING

This opinion follows rehearing of Decision No. 69481 granted by an order dated February 25, 1965. Rehearing was held before Examiner Gravelle on May 14, 1965 at San Francisco and the matter was submitted on that date.

Applicant (Cloverleaf) is a corporation and is an affiliate of Shamrock Materials, Inc. (Shamrock) and E. Pozzi Company, Inc. (Pozzi). Shamrock is located in San Rafael and Pozzi in Novato, both of which are in Marin County. Shamrock and Pozzi are readymix cement plants. The officers and shareholders of all three corporations are the same. Cloverleaf was formed by its owners primarily to conduct the business of transporting cement as a cement contract carrier for the other two corporations.

It has acquired under lease two tractors and two trailers with which it proposes to conduct operations. This equipment is presently leased to its affiliates who are hauling cement on a proprietary basis pending the issuance of the authority sought herein. The equipment is covered by liability insurance and assertedly complies with all safety and weight requirements. Cloverleaf proposes to employ subhaulers in its operation when necessary. As of October 31, 1964 Cloverleaf indicated a net worth of \$14,252.25.

Applicant's president testified, and it is uncontroverted, that the proposed operation would not endanger the safety of the public or interfere with the public use of the public highways or impair their condition or maintenance directly or indirectly. The proposed operation will not impair the service of previously certificated or permitted haulers of cement since applicant's affiliates are presently conducting a proprietary operation.

At the original hearing in this matter there were a number of protestants. Counsel for two of such protestants stated at that hearing that if the Commission would restrict any permit granted to applicant to service for its two affiliate corporations, the protests would be withdrawn. Applicant was unwilling to agree to such a restriction at that time. At the rehearing, however, counsel for applicant orally amended the application so that Cloverleaf now seeks authority to serve only Shamrock and Pozzi. As soon as that amendment was made, all the protestants withdrew their protests to the granting of the application and changed their appearances to those of interested parties.

A witness testified for each of the proposed shippers that cement is received from manufacturers located in the counties of Alameda, Calaveras, San Benito, San Mateo, Santa Clara and Santa Cruz and named the manufacturer in each case.

Applicant's president testified as to his understanding of the term "crosshauling" as used in Section 3502 of the Public Utilities Code and as to his opinion that the proposed operation would result in no such "crosshauling." Applicant's counsel stated that applicant was agreeable to accepting a restriction in any permit issued relative to the payment of the full minimum rate to subhaulers when utilized by applicant.

The proposed operation, while it requires the permit sought, is distinctive in that applicant does not seek to serve the public generally but rather to replace a proprietary operation conducted by its two affiliates. The proposed operation would allegedly allow the owners of all three corporations certain tax advantages.

After consideration the Commission finds that:

1. Applicant possesses the ability and reasonable financial responsibility to initiate the operations as a cement contract carrier herein authorized.

2. The privilege herein granted will not endanger the safety of the public, nor interfere with the public use of the public highways, nor impair the condition or maintenance of said public highways, directly or indirectly.

3. The privilege herein granted 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 a permit to operate as a cement contract carrier upon the terms and conditions set forth in the following order.

Based upon the evidence presented and the foregoing findings of fact, the Commission concludes that:

1. Applicant should be granted a permit to operate as a cement contract carrier.
2. Applicant's permit should be restricted to service for Shamrock Materials, Inc. and E. Pozzi Company, Inc. between the points of manufacture of cement in the enumerated counties on the one hand and all points and places in the County of Marin on the other hand.
3. Applicant's permit should be restricted so that whenever applicant engages subhaulers for the transportation of cement, such subhaulers will receive from applicant 100 percent of the applicable minimum rates and charges established by the Commission for such transportation.

ORDER ON REHEARING

IT IS ORDERED that the Secretary of the Commission shall issue a cement contract carrier permit to Cloverleaf Trucking, Inc., a corporation, authorizing the transportation of cement between the points of the Calaveras Cement Company of San Leandro in Alameda County, the Calaveras Cement Company of Kentucky House in Calaveras County, the Ideal Cement Company of San Juan Bautista in San Benito County, the Ideal Cement Company of Redwood City in San Mateo County, the Kaiser Cement Company of Permanente in Santa Clara County, and the Pacific Cement and Aggregate Company of Davenport in Santa Cruz County, on the one hand, and all points and places within the County of Marin on the other hand, for the following shippers only: Shamrock Materials, Inc., 665 Irwin Street, San Rafael, California and E. Pozzi Company, Inc., 7552 Redwood Highway, Novato, California. Said permit shall be subject to the following restriction: Whenever permittee engages other carriers for the transportation

of cement for Shamrock Materials, Inc. or E. Pozzi Company, Inc.,
permittee shall not pay such carriers less than 100 percent of
the applicable minimum rates and charges established by the
Commission for the transportation actually performed by such
other carriers.

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

Dated at Los Angeles, California, this 14th day of
SEPTEMBER, 1965.

Frederick B. Holchaff
President

John E. Mitchell

George T. Hoover

Augusta

Commissioners

I concur for the
reasons set forth in
my original dissenting opinion.
William C. Blunt