

ORIGINALDecision No. 70055

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of ROBERT L. TONN dba Kerman
Cement Transport, of Fresno,
California, for a permit to oper-
ate as a Cement Contract Carrier
(Application No. 10-9751-CC), San
Andreas, Kerman, et al. (File No.
T-77,538).

Application No. 46128
Filed January 2, 1964

William H. Kessler, for applicant.
Raymond A. Greene, Jr., for Miles & Sons
Trucking Service, Inc., Rock Transport,
Inc., Universal Transport System, Inc.,
Applegate Drayage Co.; James J. Trabucco,
for Southern Pacific Company; and E. G.
Jones, for Kaiser Cement & Gypsum Corp.,
protestants.
Eugene A. Feise, for Calaveras Cement Co.;
and Walter G. Herrigil, for Ideal
Cement Co., interested parties.
H. L. Farmer, Douglas C. Quinlan and
Donald Harvey, for the Commission staff.

OPINION ON REHEARING

Robert L. Tonn requested a permit to operate as a cement contract carrier. The application was denied by Decision No. 68434. Applicant's petition for rehearing was granted by an order dated March 9, 1965. Rehearing was held before Examiner Mooney on April 21, 1965, at San Francisco, and the matter was submitted subject to the filing of a late-filed exhibit which was received on May 12, 1965.

Applicant proposes to operate as a cement contract carrier between 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 Sacramento in Sacramento County, the Riverside Cement Company of Crestmore in Riverside County, and

the Riverside Cement Company of Oro Grande in San Bernardino County, on the one hand, and the City of Kerman in Fresno County, on the other hand.

Applicant owns one tractor and two hopper-type trailers. The equipment was acquired in October 1963 from N. Volanti who owns and operates a cement business in Kerman, California. Prior to October 1963, Mr. Volanti used the equipment to transport his cement from the plants of Calaveras Cement Company, Riverside Cement Company and Ideal Cement Company to his place of business in Kerman. Applicant testified that the sale of the equipment included an oral commitment by Mr. Volanti that applicant would handle all of his cement transportation needs for a 2-year period and that if applicant's service was satisfactory during said period, he would continue this arrangement.

Applicant testified that immediately upon acquiring the equipment, in October 1963, he commenced hauling cement for Mr. Volanti. He admitted that he did not then hold any operating authority. He asserted, however, that it was his understanding that no specific authority was required to transport cement until the new legislation became effective. His application for a cement contract carrier permit was filed January 2, 1964.

Applicant was issued a highway contract carrier permit on June 16, 1964 and transported gypsum and fertilizer under this authority until September 1964. The highway contract carrier permit was placed in voluntary suspension for a 1-year period on January 27, 1965.

Applicant testified that he was not aware that there was any question about the legality of his cement operation until so informed by the traffic manager of the Calaveras Cement Co. in September 1964. He stated that he immediately ceased transporting

cement and leased his equipment to Martin Trucking and Ready Mix. Under the terms of the lease (Exhibit 2) the lessee (Martin) agrees to pay the lessor (applicant) 95 percent of the gross earned by the equipment less transportation taxes. The lessor agrees to furnish drivers and pay all costs of fuel, maintenance, insurance, license fees and personal property taxes. The lease further provides that the equipment shall be under the exclusive control of the lessee. Applicant testified that, with few exceptions, the leased equipment has been driven by him and has been used to transport cement for Mr. Volanti. He stated that no other for-hire carriers of cement serve Mr. Volanti.

Mr. Volanti, by letter (Exhibit 1), indicated that if the permit is issued, he would utilize the services of applicant. Applicant was not in accord with a suggestion by counsel for several of the protestants that the permit be restricted to service for Mr. Volanti only. He explained that although it was his intent to serve only Mr. Volanti at the outset, he might later expand his operations and serve other shippers.

At the original hearing in this matter, the traffic manager for Calaveras Cement Company testified that his company would utilize the service of applicant on all shipments by his company to Mr. Volanti.

At both the original hearing and at the rehearing a representative of Universal Transport System, Inc., testified that his company had sufficient equipment and facilities to provide service to the Kerman area. He was of the opinion that the granting of additional permits would result in a diversion of traffic and thus have an adverse effect upon his company's operations.

Applicant's equipment is covered by liability insurance and assertedly complies with all safety and weight requirements. Applicant 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 financial statement included with the application shows a net worth of \$11,790. Applicant testified that since the filing of the applications his liabilities have been reduced by approximately \$6,900 and his equipment has depreciated approximately \$4,500. He stated that in other respects his financial condition is substantially the same as that shown on the statement.

The authority sought by applicant is limited to transportation between plants of the three named cement mills (Calaveras, Ideal and Riverside) and Kerman. According to the record, applicant would initially transport cement to Mr. Volanti only. This transportation is now handled exclusively by the equipment applicant has leased to Martin Trucking and Ready Mix. It is evident that the transportation for Mr. Volanti would pose no competitive threat to any of the protesting carriers or other previously certificated or permitted carriers of cement. As to whether applicant would eventually expand his operation and serve other shippers is speculative. Even assuming he were to do this, it is unlikely, due to the limited scope of the proposed operation, that any major competitive problem for other carriers of cement would result.

Protestants allege that applicant is not a fit and proper person to receive the sought permit. The evidence does not support this allegation.

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 between the enumerated points of manufacture and distribution of cement, on the one hand, and all points and places in the City of Kerman, on the other hand.

ORDER ON REHEARING

IT IS ORDERED that the Secretary of the Commission shall issue a cement contract carrier permit to Robert L. Tonn, doing business as Kerman Cement Transport, authorizing the transportation of cement between the points of 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 Sacramento in Sacramento County, the Riverside Cement Company of Crestmore in Riverside County, and the Riverside Cement Company of Oro Grande in San Bernardino County, on the one hand, and all

points and places within the City of Kerman in Fresno County, on the other hand.

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

Dated at San Francisco, California, this 7th day of DECEMBER, 1965.

[Signature] President

[Signature]

[Signature] Commissioners

We dissent.

*Fredrick B. Heleloff
George A. Grover*