

Decision No. 70160**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 WILLIAM S. & BRUCE F. ROGERS COMPANY)
 for a cement contract carrier permit.)

Application No. 46391

In the Matter of the Application of)
 ROGERS MATERIALS COMPANY for a cement)
 contract carrier permit.)

Application No. 46395

OPINION AND ORDER

By ex parte Resolution 13822, Sub. Nos. 4 and 5, each of the above applicants was granted a cement contract carrier permit. On October 27, 1964, the Commission issued an order granting rehearing pursuant to a letter filed by Miles & Sons Trucking Service, Rock Transport, Inc., and Universal Transport System, Inc. In response to a request by the Commission the protesting carriers filed a verified statement wherein they allege that because of common ownership, management and control the granting of the requested permits to the extent that they duplicate each other constitutes an unnecessary and unwarranted duplication of authority.

Although the applications disclose an affiliation between the applicants, the supporting documents evidence separate and distinct carrier operations. The Commission's records clearly show that both applicants herein were conducting operations pursuant to radial highway common carrier permits issued, respectively, to Rogers Materials Company on September 1, 1959 and to William S. Rogers and Bruce F. Rogers on March 16, 1962. The "grandfather" legislation pursuant to which Resolution 13822 was adopted did not become effective until September 1963.

There appears no need to subject the applicants herein to the expense and inconvenience of a hearing on the issue raised, in view of the position recently taken by the Commission in Decision No. 69923, dated November 9, 1965, in Applications Nos. 46540, 46541 and 46545. In said applications three affiliated corporations filed for "grandfather" certificates as cement carriers; because of the close relationship of the corporations, the parent company was granted a certificate and the other two applications were denied; rehearing was subsequently granted and the Commission, in granting certificates to the subsidiary corporations, held as follows:

The evidence establishes that common control, management and ownership exists in varying degrees as to the three applicant corporations. Although this overlap is present, it is not a factor to be considered herein in determining whether each of the applicants is entitled to a "grandfather" cement carrier certificate. The record shows that each corporation has been continually operated as a separate and distinct entity; that each held separate operating authority from the Commission to transport cement prior to the enactment of the cement carrier legislation; and that each did in fact separately transport cement during the "grandfather" period. The three corporations do not appear to have been separately created as a sham or device to obtain three, rather than one, "grandfather" cement carrier certificates.

Therefore, good cause appearing,

IT IS ORDERED that the Commission's order granting rehearing in the above matters is hereby set aside and the resolutions granting the permits are hereby affirmed.

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

Dated at San Francisco, California, this 4th day of JANUARY, 1966.

Fredrick B. Halaloff
President
George L. Hoover
Commissioners