

**ORIGINAL**Decision No. 70180

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
 ULRIC E. GRIFFITH, doing business as  
 GRIFFITH TRANSPORTATION, for a "grand-  
 father" certificate of public conven-  
 ience and necessity as a cement carrier  
 pursuant to the provisions of Section  
 1063 of the Public Utilities Code.

Application No. 46564  
 (On Rehearing)

U. E. Griffith, in propria persona, applicant.  
Russell & Schureman, by R. Y. Schureman, for  
 Max Binswanger Trucking, Matich Transportation  
 Co., Daniel Lohnes Trucking Co., Valley  
 Transportation Co., Phillips Trucking and More  
 Truck Lines; William Mitze, for Riverside  
 Division, American Cement Corporation; George  
H. Roe, for California Portland Cement Co.;  
David K. Graham, for Kaiser Cement & Gypsum  
 Corporation, protestants.  
Waldo A. Gillette, for Monolith Portland Cement  
 Co., interested party.  
Douglas Quinlan and Donald J. Harvey, for the  
 Commission staff.

OPINION ON REHEARING

The above application was filed under the "grandfather" provisions of Section 1064 of the Public Utilities Code for a certificate of public convenience and necessity to operate as a cement carrier in certain specified counties. By ex parte Resolution No. 13821, Sub. No. 42, dated June 23, 1964, the application was granted in part, and a certificate to operate as a cement carrier to and within the Counties of Imperial, Los Angeles, Orange, San Bernardino and Ventura, was issued to applicant. The certificate does not include several other counties named in the application, for which proof of operation during the "grandfather" period (June 1, 1962 to May 31, 1963) was not established.

A petition for rehearing was filed by Max Binswanger Trucking, Matich Transportation Co., Daniel Lohnes Trucking Co., Valley Transportation Co., Phillips Trucking and More Truck Lines. Petitioners allege that the shipping documents attached to the application to establish proof of operations as a cement carrier during the "grandfather" period demonstrate that all or practically all of the transportation handled by applicant during said period was either less than truckload or handled on a basis other than as a for-hire carrier and thus was not "operation in good faith" within the meaning of Section 1063 of the Public Utilities Code. The petition for rehearing was granted by Commission order dated September 15, 1964.

Rehearing was held before Examiner Mooney in Los Angeles on March 18, 1965.

Applicant testified that he was issued a permit by the Commission eighteen years ago; that the permit authorized the transportation of various commodities, including the transportation of Portland or similar cements; and that he has in fact transported cement during the past eighteen years. He stated that during the "grandfather" period he owned and operated three trucks, three tractors, two low-bed semitrailers and one flat bed semitrailer; that cement in packages was transported on the flat bed semi-equipment during this period; and that the carrying capacity of the flat bed semi-equipment was 41,000 pounds. The witness testified that he transported all types of construction equipment during the "grandfather" period; that since the middle of June 1963, his equipment has been used exclusively for moving machinery on a particular job; that although he has not transported any cement since that date, he has held himself out to the public to transport cement and would transport it if called upon to do so; that he is a party to

the Western Motor Tariff Bureau cement tariff; that he has been shopping for new hopper equipment in which to transport cement; and that it is his intention to continue to haul cement.

The documents attached to the application to establish proof of operations to and within each of the counties covered by the cement carrier certificate granted to applicant by Resolution No. 13821, Sub. No. 42, show the number of sacks of cement transported but do not show the weight of the shipment. The traffic manager of California Portland Cement Co. testified that the gross weight of each sack of Portland or similar cement shipped by his company is ninety-five pounds and that all cement mills in southern California use the same weight. Based on the gross weight of ninety-five pounds per sack, the weight of each shipment covered by the freight bills for the counties included in the certificate is as follows:

<u>County</u>	<u>Number of Sacks</u>	<u>Weight</u>
Los Angeles	375	35,625
Ventura	400	38,000
San Bernardino	250	23,750
Orange	400	38,000
Imperial	350	33,250

The document for San Bernardino County shows the Boy Scouts of America as the consignee. A charge of one hundred dollars is shown, and the word "donation" is typed on the document. Applicant testified that he considered this to be for-hire transportation. He stated that he paid transportation taxes on the amount shown and that he donated one hundred dollars to the Boy Scouts. The witness explained that rather than receive the transportation charge and return an equal amount of money to the Boy Scouts, he simply did not collect the money.

The sales and traffic manager of California Portland Cement Co. testified that his company maintains records of all shipments made from its plant; that 424 sacks of cement is the minimum amount of sacked cement that anyone could pick up from the plant; that the document attached to the application for Imperial County covers a purported shipment of 350 sacks of cement from his company; and that there is no record in the company's files of this shipment or any other transportation performed by applicant from California Portland Cement Co. during the grandfather period.

The traffic manager of the Riverside Division, American Cement Corporation, testified also that 424 sacks of cement are the minimum that anyone could pick up from his plant; that the document attached to the application for Orange County covers a purported shipment of 400 sacks of cement from Riverside's mill to University Construction Co., Fullerton; that his company has no record of either the shipment or the sale of any cement to University Construction Co.; that it is possible, though unlikely, that University Construction Co. could have purchased the cement from a third party; that if more than one unit of equipment is required to transport an order, it is possible that the last load may be less than 424 sacks; that the only other exception to the 424 sack rule is donations; and that the only record his company has of transportation performed by applicant during the grandfather period was the shipment of 250 sacks of cement which were donated to the Boy Scout Camp in Imperial County and another shipment of 200 sacks of cement which were donated to the Boy Scout Camp in Orange County.

Discussion

The cement carrier "grandfather" provisions are set forth in Sections 1063 and 1064 of the Public Utilities Code and provide as follows:

"The commission shall grant a certificate to operate as a cement carrier to any cement carrier as to the counties to and within which it was actually transporting cement as a cement carrier in good faith within one year prior to June 1, 1963, and continuously thereafter, provided such cement carrier applies to the commission for such certificate prior to December 31, 1963, and submits adequate proof of such prior operations. The delivery of one or more loads of cement either in bulk or in packages to a point in a particular county shall constitute adequate proof of such prior operations and shall entitle the applicant to authority to serve all points in said county from any and all points of origin." (Sec. 1063)

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"Provided proper application is timely filed, the commission shall issue a certificate to each cement carrier conforming to the proof of good faith operations produced by such cement carrier with respect to its operations prior to June 1, 1963, and continuously thereafter." (Sec. 1064)

"Cement carrier" is defined in Section 214.1 of the Public Utilities Code as follows:

"'Cement carrier' means every corporation or person operating within this State, engaged as a common carrier, other than a highway common carrier, for compensation in the ownership, control, operation or management of any motor vehicle loaded substantially to capacity with and transporting portland or similar cements in bulk or in packages over any public highway in this State."

The term "load of cement" as used in the "grandfather" provisions of Section 1063 is not defined in the Code. By reading Sections 1063 and 214.1 together, it is apparent that the Legislature intended this term to mean that the equipment on which the shipment is transported is loaded "substantially to capacity" with the cement. The Code is also silent as to what percentage of the carrying capacity of the equipment must be loaded with cement

to be considered loaded "substantially to capacity". The term "substantially" is a relative term. It is not a technical word having a peculiar meaning in law, but is a word in common use which must be given its plain, ordinary meaning.

The weight of the shipments represented by the documents for Imperial, Los Angeles, Orange and Ventura Counties ranged from 33,250 pounds to 38,000 pounds. The carrying capacity of the unit of equipment on which all four shipments were transported was 41,000 pounds. In each instance, the equipment was loaded substantially to capacity.

The shipment represented by the document for San Bernardino County weighed 23,750 pounds and was transported on the same unit of equipment referred to above. The equipment could not be considered substantially loaded to capacity with this shipment. In the circumstances, applicant was not operating as a cement carrier when he transported this load, and the document does not qualify applicant for a "grandfather" cement carrier certificate for San Bernardino County. It is not necessary, therefore, to consider the issue raised by protestants as to whether the shipment to San Bernardino for the Boy Scouts was or was not for-hire transportation.

Protestants also allege that applicant has not established that he "was actually transporting cement as a cement carrier in good faith within one year prior to June 1, 1963, and continuously thereafter" as required by the "grandfather" provisions of Section 1063 of the Code. The Commission in discussing the words "in good faith" in the Kenneth D. Francisco, et al., decision<sup>1/</sup> stated as follows:

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<sup>1/</sup> Decision No. 68397, dated December 22, 1964, in Applications Nos. 46118, et al., at page 9 (mimeograph copy).

"We find that the words 'in good faith' standing alone in Section 1063 mean only that the operation which is the basis for qualification pursuant to said section shall not have been merely an illusory creation of the applicant to avoid the necessity of applying for a new certificate. Whether or not the applicant is in other respects a law violator, financially irresponsible, morally unfit or deviously motivated has no bearing on the question of its rights to a certificate; it need meet only the specific and exclusive standards which the Legislature has set."

The standard of proof required by Section 1063 to establish operations as a cement carrier during the "grandfather" period to or within a particular county is evidence of delivery of one or more loads of cement to that county during said period. Photostatic copies of documents covering such transportation attached to applications for "grandfather" certificates have been accepted by the Commission in this type of proceeding as adequate proof of operations during the "grandfather" period. Applicant has for the Counties of Los Angeles, Ventura, Orange and Imperial, met the "specific and exclusive standards which the Legislature has set" by attaching a photostatic copy of a shipping document covering the transportation of a load of cement to each of said counties during the "grandfather" period.

Applicant admitted that all of his equipment has been used exclusively on a job moving machinery since the middle of June 1963 and that he has not transported any cement since that date. He stated that if he had been called upon to transport cement during this period he would have done so and that he now intends to purchase additional equipment in which to transport cement. Whether or not applicant has in fact transported cement since mid-June 1963 is not material in determining whether he is entitled to a "grandfather" cement carrier certificate. The standard of proof established by the Legislature (that is, "the

delivery of one or more loads of cement" to the counties in question) is the controlling criterion with regard to the construction of the words "and continuously thereafter" in Section 1063.<sup>2/</sup>

There remains for discussion the question of whether the documents attached to the application for Imperial and Orange Counties actually represent the transportation which they purport to represent. The witnesses for the two cement mills shown as the origins on the documents both testified that their respective firms have no records of this transportation and that the quantity of cement in each shipment is less than the minimum amount that anyone could pick up from either mill. The witness for the Riverside Division of the American Cement Company admitted that the last pickup of a shipment requiring more than one unit of equipment to transport could possibly be less than the 424 sack minimum and that although the records of his company are extremely accurate, it is possible, though unlikely, that a particular load could be overlooked. Applicant, on the other hand, testified that the shipments represented by the two documents were in fact transported by him. He stated that transportation charges were paid by the consignees and not by the mills. As to the minimum quantity requirement, applicant pointed out that each of the two shipments was most likely a part of a larger shipment. The conflict in the evidence on these two shipments will be resolved in favor of applicant.

#### Findings and Conclusions

After consideration, the Commission finds that:

1. Applicant has filed a timely application for a cement carrier certificate pursuant to the "grandfather" provisions of Section 1064 of the Public Utilities Code.

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<sup>2/</sup> In re C.F.O. Enterprises, Inc., Decision No. 68941, dated April 20, 1965, in Application No. 46460 at pages 3 and 4 (mimeograph copy).



2. Applicant was granted a certificate by ex parte Resolution No. 13821, Sub. No. 42, to operate as a cement carrier from any and all points of origin to all points and places within the Counties of Imperial, Los Angeles, Orange, San Bernardino and Ventura.

3. Applicant submitted with the application proof that it was actually transporting cement as a cement carrier in good faith within one year prior to June 1, 1963 to and within the Counties of Imperial, Los Angeles, Orange and Ventura by submitting evidence of delivery of at least one load of cement to each of said counties.

4. The document submitted with the application to establish proof of operation as a cement carrier to and within San Bernardino County during the "grandfather" period does not cover transportation of cement in equipment loaded substantially to capacity.

5. Applicant has not established that he was transporting cement as a cement carrier to and within San Bernardino County during the "grandfather" period.

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

1. San Bernardino County should be canceled from the certificate granted to applicant to operate as a cement carrier by ex parte Resolution No. 13821, Sub. No. 42.

2. In all other respects, ex parte Resolution No. 13821, Sub. No. 42, should be affirmed.

ORDER ON REHEARING

IT IS ORDERED that:

1. Sub. No. 42 on page 4 of the attachment to ex parte Resolution No. 13821 dated June 23, 1964, is amended to read as follows:

"42. A-46564, T-27,895, Ulrich E. Griffith dba Griffith Transportation, Imperial, Los Angeles, Orange and Ventura."

2. Applicant shall immediately cease and desist from transporting cement as a cement carrier to and within San Bernardino County.

3. Within thirty days after the effective date of this order, applicant shall cancel all tariff filings covering the transportation of cement as a cement carrier to and within the County of San Bernardino.

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.

[Signature] President  
[Signature]  
[Signature]

[Signature] Commissioners

*We concur, except for Orange and Imperial Counties. In our view, the weight of the evidence as to those counties favors protestants.*

*Frederick B. Holcomb  
George J. Grover*  
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