

ORIGINAL

Decision No. 70741

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
READYMIX CONCRETE COMPANY, LTD., a
corporation, of Mountain View, for
a certificate to operate as a cement
carrier (Application No. T-55, 505,
CMT-G), Alameda County, et al.
(File No. T-55,505).

Application No. 46381
(Filed August 4, 1964)

In the Matter of the Application of
HEC TRUCKING CORPORATION for
authority to transfer certificate
from Readymix Concrete Company, Ltd.,
a corporation, and remove suspension.

Application No. 47823
(Filed November 19, 1965)

Martin J. Rosen, for applicants.
Handler, Baker & Greene, by Raymond A. Greene,
for Miles & Sons Trucking and Universal
Transport System, Inc., protestants.
Brundage V. Hackler, by Daniel Feins, for
Western Conference of Teamsters, inter-
ested party.
Donald J. Harvey, for the Commission staff.

O P I N I O N

Ex parte Resolution No. 13823, Sub. No. 34, dated June 23, 1964, granted a "cement carrier" certificate to Readymix Concrete Company, Ltd. (Readymix). As the result of petitions filed by Applegate Drayage Co., Miles & Sons Trucking Service, Rock Transport, Inc., and Universal Transport System, Inc., alleging that applicant had not conducted cement carrier operations in good faith during the "grandfather period", the Commission, on October 27, 1964, issued an order granting rehearing.

Rehearing was held before Examiner Daly on March 15, 1966, at San Francisco, and the matter was submitted.

On January 12, 1965, pursuant to a request of applicant, the Commission by Decision No. 68480 suspended the certificate herein considered until January 1, 1966. Shortly thereafter Readymix negotiated for the sale of the certificate to HEC Trucking Corporation (HEC). By ex parte Decision No. 69926, dated November 9, 1965, in Application No. 47823, the transfer was authorized and the suspension terminated. On January 25, 1966, the Commission reopened Application No. 47823 so that said application could be consolidated for rehearing with Application No. 46381. The certificate was again suspended pending further order of the Commission.

Prior to rehearing Applegate Drayage Co. withdrew its protest to both applications on the ground that there was no legitimate reason for protest.

The record on rehearing indicates that Readymix actually performed the transportation of cement to and within the Counties covered by its certificate in compliance with Section 1063 of the Public Utilities Code. However, protestants contend that said operations were discontinued subsequent to December 31, 1963, and therefore fail to comply with the provisions of Section 1063. The controlling segment of Section 1063 reads 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."

According to the vice president of Readymix, said company has been in the business of dealing in and transporting Portland

cement for many years; originally there were three principal stockholders, including himself; the interest of one of the stockholders was subsequently acquired by Chas. L. Harney, Inc.; although the Harney Corporation held the controlling interest in Readymix it never exercised managerial control; following the death of Mr. Harney, in 1962, Readymix continued operating, notwithstanding the fact that the liquidation of the Harney estate placed increased pressure upon Readymix, which resulted in the sale of certain of its equipment and facilities; in 1963 HEC leased the terminal of Readymix and purchased its office furniture in addition to three sets of trailers; during 1963 and 1964, Readymix operated out of the terminal of HEC and conducted operations as a subhauler; in performing service as a subhauler Readymix used owner-operator tractors under lease arrangements, whereas the trailers were usually provided by HEC.

Certain shipping documents were introduced indicating that Readymix conducted sub-subhaul services in 1964 for Miles & Sons Trucking and Universal Transport System, Inc. Apparently the transportation was subhailed to HEC, which then turned the shipments over to Readymix. A representative of Miles & Sons Trucking testified that he was unaware of the sub-subhaul arrangement in 1964. He admitted that his company occasionally used Readymix as a subhauler but, according to his recollection, it was last used in December of 1963.

Protestants contend that even if Readymix had performed transportation during the grandfather year (June 1, 1962 to June 1, 1963) its operations subsequent to December 1963 had not been continuous and therefore not in compliance with Section 1063.

However, a witness representing Ideal Cement Company, who was called on behalf of protestants testified that his company had paid for transportation performed by Readymix on August 7, 1964. Upon the request of the attorney for Readymix, a list of these shipments was received as a late-filed exhibit, without objection.

With respect to the transfer proceeding protestants argue that this would constitute a new service and that HEC is a subsidiary of H. E. Casey Company, a large dealer in cement. This relationship, they contend, would give HEC an unfair competitive advantage over the existing cement carriers insofar as H. E. Casey Company could influence the people with whom it does business in their selection of carriers.

On April 8, 1966, protestants filed a petition for further hearing, alleging that they had not had a full opportunity to be heard and were denied the right to inquire into the nature of the shipments covered by the late-filed exhibit.

After consideration the Commission finds as follows:

1. Readymix has engaged in the transportation of cement for many years.
2. On December 13, 1963, Readymix filed an application in conformity with Section 1063 of the Public Utilities Code.
3. The application and attached documentation indicate that Readymix conducted operations as a cement carrier during the period June 1, 1962 to June 1, 1963.
4. Said operations were conducted in good faith and in full compliance with the provisions of Section 1063 of the Public Utilities Code.
5. During the years 1963 and 1964 Readymix was forced to restrict its operations in an attempt to meet the financial needs

imposed by the liquidation of the estate of one of its principal stockholders; however, Readymix continued to operate in a subhaul capacity.

6. Readymix has contracted to sell its certificate to HEC, a carrier presently operating as a cement carrier. As of May 31, 1965, HEC indicated a net worth in the amount of \$217,356. HEC possesses the necessary experience and financial ability to conduct the proposed service.

Conclusions

The Legislature has determined the exclusive standard for the issuance of a cement grandfather permit. Section 3623 of the Public Utilities Code, in determining proof of grandfather operations, clearly states as follows:

"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."

In a cement certificate case wherein the issue of continued service was raised the Commission held that evidence relating to the discontinuance of service after the grandfather period was not relevant in the face of proof showing compliance with statute. (Decision No. 69163 signed June 1, 1965, in Application No. 46565.)

Protestants appear to be raising the old argument of abandonment in a transfer proceeding, along with the attendant argument that this, in effect, would constitute a new service, which can only be justified by a showing of public convenience and necessity. The Commission has repeatedly rejected this argument and rejects it once again.

The provisions of ex parte Resolution No. 13823, Sub. No. 34, and Decision No. 69926 authorizing the transfer should be affirmed. The petition for further hearing should be denied.

O R D E R

IT IS ORDERED that:

1. The provisions of ex parte Resolution No. 13823, Sub. No. 34, and Decision No. 69926 are hereby affirmed.
2. The time within which to comply with the provisions of Decision No. 69926 is hereby extended to November 1, 1966.
3. Concurrently with the effective date of the tariff filings required by ordering paragraph 3 of Decision No. 69926, the suspension provided for in Decision No. 68480, dated January 12, 1965, in Application No. 46381 and as amended by Commission order dated January 25, 1966, in Application No. 47823, is hereby terminated.
4. The petition of HEC and Readymix filed February 9, 1966 requesting that rehearing be limited to the issue of suspension only is hereby denied.
5. The petition of protestant filed April 8, 1966, requesting further hearing is hereby denied.

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

Dated at San Francisco, California, this 20th day of MAY, 1966.

Fredrick B. Hallock
President
George L. Grover
Augustin

Commissioner William [unclear] necessarily absent, did not participate in the disposition of this proceeding.