

**ORIGINAL**

Decision No. 70977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of JAMES CHENOWETH, an individual, of SUNNYVALE, California, for a permit to operate as a cement contract carrier, (Application No. 43-5639-CC), north of the Tehachapis, (File No. T-76,937).

Application No. 46239

In the Matter of the Application of KENNETH L. PETERS dba KEN PETERS TRUCKING, of Mountain View, California, for a permit to operate as a cement contract carrier, (Application No. 43-5638-CC), north of Tehachapis, (File No. T-76,427).

Application No. 46260

In the Matter of the Application of RICHARD A. YARIME, an individual, of San Jose, for a certificate to operate as a cement carrier, (Application No. T-75,173, CMT-G), San Mateo County, et al., (File No. T-75,173).

Application No. 46388

In the Matter of the Application of GEORGE J. DI GINO, an individual, of Redwood City, for a certificate to operate as a cement carrier (Application No. T-67,391, CMT-G), Sonoma County, et al., (File No. T-67,391).

Application No. 46525

In the Matter of the Application of ANSELMO J. AZZARO, JR., an individual, of Santa Clara, for a certificate to operate as a cement carrier (Application No. T-66,195, CMT-G), Santa Clara County, et al., (File No. T-66,195).

Application No. 46543

In the Matter of the Application of RAY CHOY, an individual, of Santa Clara, for a permit to operate as a cement contract carrier, (Application No. 43-5698-CC), statewide, (File No. T-70,472).

Application No. 47225

Martin J. Rosen, for applicants.  
Russell & Schureman, by R. Y. Schureman, for  
Max Binswanger Trucking, Daniel Lohnes  
Trucking Co., Matich Transportation Co.,  
Moore Truck Lines, Phillips Trucking  
and Valley Transportation Co.; S. A. Moore,  
for Kaiser Cement & Gypsum Corporation  
and Permanente Trucking Company;  
Raymond A. Greene, Jr. of Handler, Baker  
& Greene, for Universal Transport System, Inc.,  
Miles & Sons Trucking Service, Rock Transport  
System, Inc., and Merle Weber Trucking Company;  
Walter G. Herrigel, for Ideal Cement Company;  
George H. Roe, for California Portland Cement  
Company; William E. Mitze, for Riverside  
Division, American Cement Corporation;  
E. J. Bertana, for Pacific Cement and  
Aggregates; Eugene A. Feise, for Calaveras  
Cement Company; protestants.  
Donald J. Harvey, for the Commission staff.

#### O P I N I O N

James Chenoweth, Kenneth L. Peters, Richard A. Yarimie, George J. Di Gino, Anselmo J. Azzaro, Jr. and Ray Choy filed individual applications on or about December 11, 1964 requesting contract carrier permits to transport cement as subhaulers.

Public hearings were held before Examiner Daly at San Francisco on December 14, 1965 and February 23, 1966, with the matters being submitted on the latter date upon the receipt of briefs since filed and considered.

Kiyoshi Watari was substituted for Ray Choy during the course of the hearings and Kenneth L. Peters requested that his application be dismissed.

With the exception of James Chenoweth, applicants presently hold permits authorizing operations as cement contract carriers to, from and between various counties within the State. Applicant Chenoweth requests authority to operate statewide as a cement subhauler. The other applicants amended their original applications to request subhaul authority to all counties within the State not covered by their present permits.

JAMES CHENOWETH

Applicant Chenoweth worked as a driver for two cement carriers. Although he holds no present cement carrier authority he does hold a radial highway common carrier permit. Pursuant to such authority he has engaged in the transportation of sand and gravel both as a prime carrier and as a subhauler. If the requested subhaul permit is granted applicant Chenoweth proposes to acquire appropriate equipment for the transportation of cement. As of September 15, 1965, he indicated a net worth in the amount of \$11,800.

RICHARD A. YARIMIE

Applicant Yarimie is located in San Jose. He owns and operates a 1962 Peterbilt tractor and a set of bulk cement trailers. As of December 14, 1965, he indicated a net worth in the amount of \$35,053. Applicant Yarimie testified that he had subhauled for several prime carriers in the past but had not subhauled cement for approximately a month and a half prior to the hearing. He did not intend to divert traffic from prime carriers, but merely get the over-flow business such carriers could not handle.

GEORGE J. DI GINO

Applicant Di Gino maintains his place of business in San Carlos. He owns and operates a Peterbilt tractor. As of February 28, 1966, he indicated a net worth in the amount of \$50,583. From 1957 to 1960 he was employed as a driver. From 1960 to 1964 he was engaged as a subhauler of cement. Although applicant Di Gino did not appear at the hearing it was stipulated that if he had testified his testimony would have been substantially the same as applicant Yarimie.

ANSELMO J. AZZARO, JR.

Applicant Azzaro has been engaged in the transportation of cement for eight years. He owns a tractor and a set of trailers. As of November 30, 1965, he indicated a net worth in the amount of \$24,450. In the past he has subhailed for Universal Transport System, Inc. and Miles & Sons Trucking Service. Up to the time of hearing he had not transported any shipment of cement as a subhauler since October 9, 1965. As of October 1, 1965, his equipment was under lease to Machado Trucking Company.

KIYOSHI WATARI

Applicant Watari has been engaged in the trucking business for three years. He recently purchased a tractor and indicated that he will acquire appropriate trailers if the permit is granted. As of December 14, 1965, he indicated a net worth in the amount of \$21,130. Prior to September 1965, he transported aggregates as a subhauler pursuant to a radial highway common carrier permit. Since September 1965 he has transported cement and salt for a prime carrier, using leased trailers.

Applicants propose to provide a subhaul service to prime carriers of cement. It is their contention that their proposed services cannot divert traffic from the existing carriers because prime carriers would only use the services of subhaulers when they were unable to provide service themselves. Applicants further contend that in the transportation of cement there are peak periods when the prime carriers are unable to meet the demand for service and it is during such periods applicants would be able to provide a much needed public service.

The manager of Aggregate Trucking Corporation testified on behalf of applicants, but stated that he has no present need for subhaulers of cement because of a recent modification of Minimum Rate Tariff No. 10, which provides that on the transportation of cement a subhauler must be paid 100 percent of the applicable minimum rate.

Representatives of the cement companies testified in protest to the application. They are of the opinion that as the number of carriers increases, the traffic is diluted, with resultant increase in the cost of transportation, which the cement companies absorb. On January 1, 1966, the cement companies assertedly agreed to an increase of 1 cent per 100 pounds in the cost of cement to defray transportation costs. For the most part, these witnesses testified that they had no problem during the peak periods in obtaining transportation service; however, several admitted that there are occasions when subhaulers must be used. A few testified that certain subhaulers have exerted economic pressure through shippers, which has forced cement companies to use subhaulers as prime carriers under the guise of an apparent subhaul arrangement.

The protesting carriers testified that they possess the necessary facilities and equipment to meet all demands for service even during the peak periods; because of the requirement that cement subhaulers be paid 100 percent of the minimum rate they no longer use the services of subhaulers; and they are concerned that the Commission might, if the permits were issued, subsequently remove the subhaul restriction and allow applicants to operate as prime carriers.

After consideration, the Commission finds as follows:

1. With the exception of Chenoweth, applicants herein are presently authorized to operate as cement contract carriers in various counties within the State pursuant to permits duly issued by this Commission.

2. Applicant Chenoweth seeks authority to transport cement statewide as a subhauler. The other applicants request subhaul authority to all points within the State not covered by their existing prime haul authority.

3. By limiting their applications to subhauling applicants offer to serve all authorized carriers on an on-call basis. They do not intend to either solicit or serve shippers of cement directly.

4. Because of a recent Commission rule requiring prime carriers to pay 100 percent of the minimum rate charges to subhaulers the use of subhaulers by prime carriers has greatly diminished.

5. Although the use of subhaulers has greatly decreased since October 9, 1965, there are occasions during the peak periods when subhaulers must be used to meet the public demand.

6. The proposed operations would not divert traffic from the existing carriers. It would merely be a supplemental service when deemed necessary by the prime carriers.

7. Applicants possess the experience and financial ability to initiate the proposed operations.

8. Granting of the permits will not endanger the safety of the public or interfere with the public use of the public highways or impair the condition of them, directly or indirectly.

9. The proposed operations will not impair the service of previously certificated cement carriers or permitted cement contract carriers.

10. Applicants are fit and proper persons to receive such permits to operate as cement contract carriers.

The Commission therefore concludes that the applications as amended should be granted.

ORDER

IT IS ORDERED that:

1. The Secretary of the Commission shall issue to James Chenoweth a cement contract carrier permit authorizing operations as a subhauler between all points within the State.

2. The Secretary of the Commission shall issue to Richard A. Yarinie, George J. Di Gino, Anselmo J. Azzaro, Jr. and Kiyoshi Watari cement contract carrier permits authorizing operations as subhaulers between all points in the State not covered by their existing prime carrier permits.

3. Application No. 46260 is hereby dismissed.

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

Dated at San Francisco, California, this 19th day of JULY, 1966.

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President

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*Fredrick B. Hallock*

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*Augusta*

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*William B. ...*  
Commissioners

*I dissent.  
George T. Grover*

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.