

Decision. 84 10 092

OCT 17 1984

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 FRANK C. ALEGRE TRUCKING, INC.)
 (Cal. T-104128), a California)
 corporation, for a Cement Carrier)
 Certificate authorizing service to)
 and within the Counties of Butte,)
 Colusa, Glenn, Humboldt, Kern, Lake,)
 Lassen, Madera, Marin, Mariposa,)
 Napa, San Benito, San Luis Obispo,)
 Santa Barbara, Shasta, Solano,)
 Tehama and Trinity.)

Application 83-06-33
(Filed June 16, 1983)

(See Appendix A for appearances.)

O P I N I O N

Frank C. Alegre Trucking, Inc. (applicant), a California corporation, operates as a cement carrier under a certificate of public convenience and necessity granted by Decision (D.) 91078 dated November 30, 1979. That decision authorizes operations from any and all points of origin to any and all places in 24 counties, namely, Alameda, Alpine, Amador, Calaveras, Contra Costa, El Dorado, Fresno, Mendocino, Merced, Monterey, Nevada, Placer, Sacramento, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Sonoma, Stanislaus, Sutter, Tuolumne, Yolo, and Yuba. Applicant also holds dump truck, highway contract, heavy-specialized, and tank truck carrier permits.

Applicant here seeks authority to expand its cement carrier certificate to serve the additional 18 counties of Butte, Colusa, Glenn, Humboldt, Kern, Lake, Lassen, Madera, Marin, Mariposa, Napa, San Benito, San Luis Obispo, Santa Barbara, Shasta, Solano, Tehama, and Trinity.

The application is protested by Universal Transport System, Inc. (Universal); Foothill Bulk Transport, Inc. (Foothill); Commercial Transfer, Inc. (Commercial); Raymond E. Skaggs (Skaggs); Les Calkins Trucking (Calkins); Rich Ladeira Trucking, Inc. (Ladeira); CAP Transport, Inc. (CAP); and Amaral Trucking, Inc. (Amaral).

Public hearing was held before Administrative Law Judge Frank J. O'Leary in San Francisco, California beginning on November 7, 1983, and continuing for ten days ending on January 9, 1984. The matter was submitted with the filing of concurrent briefs on March 9, 1984.

On April 5, 1984 Universal filed a motion to strike portions of applicant's brief because applicant's request that official notice be taken of the material was not made at the hearing. Universal alleges that such failure is improper and prejudicial.

Applicant's Evidence

Eight witnesses were presented by applicant, of which three were operational, namely, its president and two certified public accountants. The remaining five witnesses were shipper witnesses, two of whom represented the same company.

A. Operational Evidence

Frank C. Alegre started a trucking business as an individual in 1963. In 1973 the present corporation was formed which succeeded the individual in the trucking business. Prior to the issuance of D.91078 applicant held authority to conduct operations as a cement carrier from all points of origin to any and all places in 14 of the 24 counties presently authorized. At present, applicant employs 66 full-time employees, including 9 office personnel, 15 shop personnel, 2 executives, and 40 drivers. Principal operations are in the transportation of rock, sand and gravel, bulk cement and other commodities which are either regulated under Minimum Rate Tariff 7-A

or exempt from rate regulation. Applicant operates power and trailing equipment. 36 power units are available at any given time for the transportation of bulk cement. Trailing equipment includes 29 sets of double pneumatic trailers and 3 semi-pneumatic trailers used for the transportation of bulk cement in one direction and for other commodities in the opposite direction such as silica sand, lime, fertilizer, barite, bentonite, soda ash, fly ash, and gypsum. Ten additional tractors and ten additional sets of pneumatic trailers or semi-pneumatic trailers are to be acquired. All power equipment can be used in cement as well as dump truck transportation and applicant is diligent at seeking backhauls and crosshauls to increase utilization of equipment. All of the power units are equipped with mobile radios.

Applicant's business is conducted from a 12½ acre site in Lodi which consists of parking areas, an office, shop, storage building, fencing, and fuel storage. Ten of the 15 shop personnel are mechanics that work in two successive eight-hour shifts.

Applicant's shop is fully equipped with tools and equipment necessary for all repairs from minor to major, including repairs to engines, transmissions, rear ends, and electrical systems. Programs covering fleet maintenance and safety are conducted at the Lodi terminal. Fleet safety is emphasized with all drivers. California Highway Patrol rules and regulations are reviewed periodically in meetings with management, drivers, and applicant's insurance carrier. Drivers' qualifications, ability, and past performance are thoroughly checked. Drivers must report daily on the condition of equipment which they operate.

Applicant's present operations are principally for accounts in the Bay Area and the Sacramento and San Joaquin Valleys. One portion of the cement fleet works between the cement-producing plants or transfer facilities and the various consignee locations in the Bay Area during the day and then these units are loaded for

return to Lodi at night and deliveries are made at San Joaquin and Sacramento Valley destinations the next morning. This same portion of the fleet works the Sacramento and San Joaquin Valley areas the following day. The other portion of the fleet works the Sacramento and San Joaquin Valley areas on one day and the Bay Area the next. The object is to run the least amount of empty miles to and from the cement manufacturing plants and, to the extent cement is not available, to transport other commodities to minimize empty miles.

Applicant's balance sheet as of September 30, 1983 shows total assets of \$2,241,302, offset by total liabilities of \$1,126,688, with a resultant stockholder's equity of \$1,114,614. The assets include approximately \$1,000,000 of revenue producing equipment and a receivable totaling \$730,090 from an affiliate company, namely, FTG Construction Company (FTG). FTG is a partnership owned by Frank Alegre's three sons. FTG is involved in a materials and construction business. Applicant's statement of earnings for the nine-month period ended September 30, 1983 shows net income before income taxes of \$476,272 on total revenues of \$4,906,735.

On cross-examination Frank Alegre admitted to owning a condominium in Maui. Customers of applicant and friends of Frank Alegre are allowed use of the condominium. He also testified that applicant is a respondent in OII 83-05-01 which is an investigation on the Commission's own motion into the operations, rates, and practices of applicant and others.

B. Public Witness Testimony

Witnesses from four companies testified in support of the application, two of which are manufacturers of cement, namely, Kaiser Cement Corporation (Kaiser) and Lone Star Industries (Lone Star). The other two are users of cement, namely, A. J. Raisch Paving Company (Raisch) and Pacific Ready-Mix Inc. (Pacific).

1. Kaiser Cement Corporation

Douglas J. Reynolds from Kaiser testified that Kaiser is the largest manufacturer of portland cement in northern California. Its production facility is located at Permanente and has a capacity of 1.8 million tons annually. Kaiser would not disclose the specific volume manufactured or the volume of deliveries to any particular destination as it considers such information to be proprietary. Kaiser has storage and distribution facilities at Eureka and Fresno. This witness sponsored Exhibit 8 which is a list of northern California cement carriers and the equipment available by each for the transportation of bulk cement. Applicant has the most equipment with 32 trailers, almost twice as much as the carrier with the second largest fleet. The list contains 24 carriers with a combined total of 230 trailers. Applicant's 32 trailers constitute 13.9% of the 230 trailers.

Kaiser has been using the service of applicant since the 1970s. Kaiser's criteria for carrier selection are size of cement fleet, the availability of units when required, past performance and service, rate levels, radio dispatch particularly on direct projects, terminal location of the carrier, the carrier's general hauling pattern and capability of diverting loads. Kaiser supports a grant of the authority to all counties sought. Normally shipments from Kaiser are transported on a prepaid basis and Kaiser selects the carrier; however, in most instances the purchaser of the cement indicates to Kaiser its preference of carrier. Normally Kaiser will abide by the customer's wishes. The transportation of bulk cement which originates at Kaiser via applicant generally is destined to a batch plant of Pacific.

Reynolds also sponsored Exhibit 9 which shows the actual and forecasted market for cement volumes in northern California in 1982, 1983, and 1984. Using actual figures for the first nine months and estimated figures for the last three months,

the 1983 volume of cement transported in northern California increased 17.6 percent over the 1982 volume. A further 12.9% increase is projected for 1984. On cross-examination the witness presented Exhibit 10 which shows actual tonnage of cement shipped from 1977 through June 1983. The exhibit shows that during that period, 1982 was the lowest production year. The figure for 1983 in Exhibit 9 is approximately the same as the figure for 1981 in Exhibit 10 and the forecasted figure for 1984 in Exhibit 9 is approximately midway between the 1980 and 1981 figures in Exhibit 10. Kaiser supports granting the application. ✓

2. Lone Star Industries

Robert J. Puppo appeared on behalf of Lone Star. He testified that Lone Star is a manufacturer of portland cement distributed to the 48 counties of northern California, which are bounded by the southern boundary of Kern County and the Oregon border. Its production facility is at Davenport, which is located approximately ten miles north of Santa Cruz, California. This facility has a rated capacity of 775,000 tons of cement production per year. This is a new production plant which was completed in 1980. It increased Lone Star's rated capacity of cement production from the prior 400,000 tons annually. In addition, Lone Star has two storage and distribution terminals, one located in Redwood City and one located in Sacramento. Lone Star has essentially the same policy as Kaiser with regard to proprietary information regarding sales and distribution volumes. Lone Star has its own equipment for the transportation of cement consisting of six tractors and six sets of trailers, two of which are pneumatic and four of which are gravity flow units.

Applicant provides bulk cement transportation directly for the account of Lone Star. These movements are from Davenport to the Lone Star storage and distribution terminals in Sacramento and Redwood City and from those facilities to Lone Star ready-mix plants in San Francisco and Sacramento. Applicant also transports bulk

cement shipments for several of Lone Star's customers including Pacific, Calstone, and Monier, Inc. Lone Star has used applicant for the transportation of bulk cement for the last six or seven years and describes the services as very efficient. Lone Star supports a grant of cement carrier authority to applicant for all counties requested. Lone Star, like Kaiser, follows the practice of honoring the customers' preference for selection of carriers even though it pays the freight charges.

3. A. J. Raisch Paving Company

Douglas L. Beatty, vice president and general manager of Raisch's ready-mix division, appeared on behalf of his company. Raisch is in the ready-mix concrete business and operates a fixed batch plant in San Jose and owns two portable batch plants. One portable plant has been located in its San Jose yard for over two years. A second portable batch plant is located in Trinity County. Raisch also has a one-half interest in another portable batch plant (Pacific owns the other one-half interest) which is operated in a joint venture under the name of Conmat-Pacific Company and it is currently on location in Lake County for a project known as Bottle Rock Power Plant (Bottle Rock).

From the inception of the Bottle Rock job, applicant was used to transport the bulk cement to the portable batch plant. In July 1983 Foothill replaced applicant as the carrier used to transport the cement to Bottle Rock, since applicant did not have authority to Lake County.

The witness identified a number of counties where various projects were under way which might utilize portable batch plants. He indicated that five years ago, his company participated in only two projects requiring a portable batch plant; however, during the year 1983, they participated in 12 such projects. The witness also testified that his company has never been without sufficient equipment to obtain bulk cement transportation. In the joint venture with Pacific, it is Pacific that controls the

transportation of bulk cement by common carrier. The witness stated that his company has its own equipment which is utilized for 90 to 95% of its cement transportation. The witness stated that his company had not used applicant in the last three months and that the Bottle Rock project was the only project on which his company had used the services of applicant. On cross-examination, the witness admitted that the decision as to whether or not to use applicant or any other carrier was outside of his authority.

4. Pacific Ready Mix, Inc.

Bruce Stimpson and John Rafael testified on behalf of Pacific. Stimpson has been with Pacific only since January of 1983. He stated that Pacific currently has 3½ mobile batch plants. The ½ plant is the plant which is part of the joint venture with Raisch previously described. The other three plants are located at South Geysers, at a Tehachapi project, and one has recently been moved to Fresno from Jones Fork. Pacific also operates 15 stationary batch plants throughout northern California. Stimpson testified that applicant is utilized on 100% of the Pacific bulk cement movements, except to destinations where applicant does not have authority. The witness stated that Pacific purchases its cement from Kaiser and Lone Star.

Rafael testified that applicant is the only carrier used by Pacific. He also testified with regard to the various batch plants in a manner similar to the testimony by Stimpson. He testified that Frank Alegre spends a great deal of time with Rafael in working out how a job will be bid, and how the equipment will be set up. As an example, he indicated that Frank Alegre spent in excess of five days working on the Tehachapi Project. Pacific wants one carrier to service its bulk cement transportation in California. Applicant commenced providing this service in July of 1981. Prior to applicant, Universal handled all of Pacific's needs for 29 years. In the past 37 years, applicant is only the third carrier to provide service for Pacific.

Pacific projects a 15 to 20 percent increase in its ready-mix business in 1984 over sales in 1983. This is based upon the backlog at the end of the 1983 year (orders booked but not yet delivered). Applicant is used as the sole carrier because of service, cooperation, control, recordkeeping, and 24-hour accessibility and communication. Considering 15 stationary ready-mix locations and all the dispatching, coordination, and diversions which are required, Pacific believes it is essential to have one carrier provide the service instead of multiple carriers.

Protestants' Evidence

Eight cement carriers filed protests to the application; however, one of the protestants, CAP made an appearance but did not present any evidence in support of its protest. The protest of CAP will be disregarded. Appendix B contains a table showing the counties involved herein to which the protestants who presented evidence have cement carrier authority.

A. Universal Transport System, Inc.

George L. Roberts, the president and general manager of Universal, testified on behalf of his company. That testimony disclosed that Universal holds authority as a cement carrier to 48 counties including all of the counties to which applicant seeks authority here.

Universal maintains an office and terminal facilities in Stockton, and a satellite terminal at Redwood City. It presently employs 13 drivers and operates a fleet of equipment specially designed for the transportation of cement, which includes 14 two-axle tractors and 14 sets of pneumatic type hopper trailers of which 26 are equipped with bottom gates for gravity unloading. The equipment investment is approximately \$1,100,000. The size of the 1983 fleet reflects a substantial reduction from the number of units it possessed in 1981. In that year, it lost the Pacific account, was required to "park" fourteen units, and because the cement business was further depressed in 1982, those units were sold. It controls

its equipment through a radio communication system and all power units have mobile radios.

CAP Concrete, a ready-mix company which owns CAP, the protestant which did not present any evidence, purchased the stock of Universal on January 15, 1982. Under the sale agreement, the selling stockholders, Golzen, Stoops and Roberts, held the stock as security or as a pledge for the payment of the purchase price. On April 28, 1983, a petition in bankruptcy was filed on behalf of CAP Concrete. The former shareholders, upon default on the purchase note in January 1983, resumed control as pledgees of Universal.

Universal presented financial statements for the year ended December 31, 1982 and the six months ending June 30, 1983. Those statements disclose that during 1982, 89% of the carrier's transportation revenue was from the transportation of bulk cement. During the first six months of 1983, 93% of its revenues were from the transportation of bulk cement. The balance of the revenue was generated from the transportation of lime, fly ash and sand which are transported in Universal's pneumatic equipment. A large portion of its current business is the transportation of bulk cement between Kaiser's Permanente plant and the Port of Redwood City. From January 1, 1983, through October 30, 1983, Universal transported 8,680 bulk shipments of cement. More than 50% of its gross revenues is derived from transportation performed for Kaiser.

Roberts stated that most of the hauling of bulk cement is one way. To create a backhaul situation the carrier must have reasonable control over the outbound movement of traffic and normally it does not control where the product is purchased. Rather, it is told by its customers where the product is to be picked up and where it is to be delivered. Another limitation on such transportation is the type of pneumatic equipment being used because there are not many products that can be transported which do not contaminate cement. Universal solicits commodities other than cement for backhaul and crosshaul purposes. Roberts and all of his drivers solicit business on behalf of his company.

During the period January 1, 1983 through November 4, 1983 Universal transported a total of 214 shipments of bulk cement to 10 of the counties involved in the application as follows:

<u>County</u>	<u>No. of Shipments</u>
Colusa	2
Glenn	26
Humboldt	10
Lake	4
Marin	6
Mariposa	2
Napa	5
San Luis Obispo	17
Solano	139
Tehama	3
Total	214

No shipments were transported to the other eight counties. Some of the 139 shipments transported to Solano County were destined to a CAP Concrete facility in Rio Vista; however, the witness could not specify or estimate how many.

Exhibit 13 is a listing of the cement carriers authorized to serve each of the 18 counties for which applicant here seeks authority. Roberts stated that the carriers listed thereon compete with his company for cement transportation business.

Universal's daily equipment usage averaged 9.25 units, a daily use factor of 66%.

Universal opposes the application because over the past two years it has had idle equipment and believes it is able to handle the available traffic to the involved counties. Also, there is a large number of carriers that seek this traffic and the competition for it is intense. If Universal's traffic is diluted through the loss of business, its equipment utilization factor will be decreased. Through such loss, Universal will be able to eliminate only its running and labor expense, but the fixed expenses for equipment payments, radio, and terminal costs, shop, lights and other expenses, continue. Such dilution will adversely affect the service that Universal holds available to the public.

B. Les Calkins Trucking, Inc.

Lester T. Calkins, president of Calkins, testified on behalf of his company. It holds cement common carrier authority to serve 56 counties in California including all of the counties to which applicant seeks authority here. The company operates 13 power units and it also occasionally uses tractors from the dump truck fleet which have blowers to assist in loading and unloading cement. The trailer units for cement include 11 sets of double pneumatic trailers and five pneumatic semitrailers, for a total of 16 such units.

For the first 10 months of 1983, Calkins earned a net income of \$204,468 on total revenue of \$2,526,002, and had an operating ratio of 91.9%. Approximately one-third of the total revenue (\$830,000) was derived from the transportation of cement within California.

The witness could not remember any 1983 shipments to the counties of Butte, Colusa, Glenn, Lassen, Madera, Marin, Mariposa, Napa, San Benito, Solano, Tehama, or Trinity. Calkins did have approximately 200 shipments to the other six counties requested as follows: Humboldt (25 or so to the Kaiser storage and distribution facility at Eureka), Kern (1), Shasta (5 or 10), Santa Barbara (25 to 50), San Luis Obispo (10 to 15), and Lake (approximately 100). During the 10-month period the witness was not aware of the total number of cement shipments which Calkins transported to generate the \$830,000 of cement revenue but estimated there were several thousand. Calkins did not know what portion of its \$830,000 in cement revenue resulted from transportation to or within the 18 counties.

Calkins is opposed to the application mainly because applicant, who is the largest cement carrier and whose customer Pacific is the largest user of cement, will be able to file rate reductions which would be detrimental to Calkins' operation.

The witness also testified that several years ago he requested Kaiser and Lone Star to support an application of Calkins for cement carrier authority and was informed by both that they did not support any carrier's application for authority and therefore would not support Calkins.

C. Raymond E. Skaggs

Skaggs testified on his own behalf as an individual. Skaggs holds authority as a cement carrier to 47 counties including 16 of the counties to which applicant seeks authority here. Skaggs does not have authority to Kern and Santa Barbara counties.

Skaggs' revenue derived from cement transportation for 1983 totaled \$705,959, an increase over 1982 revenues which totaled \$579,213. 26.25% of the 1983 cement transportation revenue was derived from Sayar Industries which has a total of six ready-mix locations, four in Solano county and one each in Napa and Yolo counties. (Yolo County is not involved in this application.)

With respect to the remaining counties to which Skaggs holds authority that are involved in this application, he could not remember any 1983 shipments to the Counties of Colusa, Humboldt, San Benito, San Luis Obispo, and Trinity. Skaggs recalled shipments to the other eight counties requested as follows: Butte (9 to 12 per month), Glenn (4 per month), Lake (10 per month). Lassen (1 per month), Madera (2 per month), Marin (3 to 4 per month), Shasta (5 during the year), Tehama (15 during the year).

The witness introduced his equipment list and that of Frank E. Hicks Trucking, Inc. as part of Exhibit 34. The exhibit and Skaggs' testimony disclose that Skaggs operates 10 tractor and trailer combinations. Frank E. Hicks Trucking, Inc. operates an additional 8 tractors, 5 sets of pneumatic doubles, and 2 pneumatic semitrailers. Skaggs testified that the Hicks' equipment is available to him on a subhaul basis.

Skaggs testified that Sayar Industries, had been approached by applicant with a proposal to transport the Sayar traffic at a reduced rate. Skaggs was concerned about this because, at that time, as now, applicant had no authority to serve Solano County.

Skaggs summarized his reasons for protesting the application as follows:

"Well, basically, I am protesting it in order to stay in business with our two companies, and up to this point in time, Applicant has never been a competitor, as far as competing.

"And if he is granted this new authority and has his predatory practices, as far as I can see, why, he is just going to--he will take my prime customer away from me on the basis of a rate reduction, that he has already tried to do even before he had Solano County."

D. Commercial Transfer, Inc.

Terry D. Fortier, president and chief executive officer of Commercial, testified on behalf of his company. Under its cement common carrier certificate, it is authorized to serve 40 counties, including 12 of the counties to which applicant seeks authority here, namely, Butte, Colusa, Kern, Madera, Marin, Mariposa, Napa, San Benito, San Luis Obispo, Shasta, Solano, and Tehama. Commercial made no review of its records and had no specific recollection of the number of shipments, if any, it handled to those counties.

For the first nine months of 1983 Commercial's revenue (excluding subhaul operations) totaled \$2,155,283, of which \$965,223 was derived from the transportation of cement.

Commercial's fleet of equipment includes 38 power units and 15 sets of pneumatic trailers. One set is presently inoperative. It also has flatbed trailing equipment. Exhibit 31 is a listing of pneumatic trailers which were not utilized for the transportation of cement from January 1, 1983 to and including November 28, 1983. The exhibit discloses that a substantial amount of equipment was available to handle additional cement shipments.

E. Foothill Bulk Transport, Inc.

Shirley L. Tibbs, secretary/treasurer of Foothill testified on behalf of her company. Foothill holds authority as a cement carrier to 29 counties including ten of the counties to which applicant seeks authority here, namely, Butte, Glenn, Kern, Lake, Marin, Mariposa, San Luis Obispo, Santa Barbara, Shasta, and Solano. It has customers in eight of those counties but no customers in Marin and Mariposa Counties. It did not present evidence indicating the number of bulk cement loads it handled to the eight counties.

Foothill maintains an office and terminal facilities in Mountain View. It employs nine drivers and operates nine tractors, five sets of double pneumatic trailers and six pneumatic semi-trailers. The tractors are equipped with 2-way radios.

Foothill presented financial statements for the year ended December 31, 1982 and the eight months ended August 31, 1983. Those statements disclose that during 1982 its gross receipts totaled \$1,071,766, of which \$645,441 (60.2%) was from the transportation of cement. For the first eight months of 1983 its gross receipts totaled \$573,035, of which \$353,443 (61.7%) was from the transportation of cement.

Foothill transported the shipments to Bottle Rock in Lake County after applicant discontinued the service. As part of Exhibit 17, Mrs. Tibbs presented an equipment utilization study showing that, for the period January through September 1983, its equipment utilization was only 62%. In computing this percentage, the Foothill witness assumed one load per day as full utilization of equipment. Mrs. Tibbs stated that this was very conservative because the equipment is capable of more than one load per day in many instances. Exhibit 17 also contained a study showing the number of weeks that Foothill's drivers collected unemployment for the period January 1, through June 30, 1983. This study showed that five of the nine Foothill drivers collected unemployment and were off work for periods of 7, 10, 11, 14, and 14 weeks, respectively. Foothill took

the position that it is a relatively small carrier that does provide the service required of it, that 1983 was a reasonably good year financially, but Foothill and all cement carriers had suffered through very poor years in 1981 and 1982.

Mrs. Tibbs testified that competition from the applicant would be unfair competition because of the applicant's relationship with Pacific.

F. Amaral Trucking, Inc.

Lloyd Amaral, president of Amaral, testified on behalf of his company. Amaral holds a cement carrier certificate authorizing service to 34 counties including 10 of the counties to which applicant seeks authority here, namely, Butte, Glenn, Kern, Madera, Marin, Napa, San Benito, Santa Barbara, Shasta, and Solano.

During 1982 and 1983, Amaral did not transport any shipments to the counties of Napa, Santa Barbara, Shasta, and Solano. With respect to the remaining counties shipments were transported as follows:

<u>County</u>	<u>1982</u>	<u>1983</u>
Butte	0	3
Glenn	0	2
Kern	4	0
Madera	1	0
Marin	50 to 100	50 to 100
San Benito	"quite a few"	"quite a few"

Amaral's headquarters is located in Union City. Amaral operates 14 power units for cement transportation and 10 sets of double pneumatic trailers. It operates no pneumatic semi-trailers. 78% of Amaral's revenue is derived from the transportation of commodities other than cement. The remaining 22% is derived from cement transportation. Amaral reduced its cement fleet in 1981 by selling two sets of pneumatic trailers. The two sets were sold because of a decrease in the demand for the transportation of cement.

Amaral presented financial statements for the period ended September 30, 1983. For the first nine months of 1983 its gross income totaled \$3,226,149, of which approximately 20% was attributable to the transportation of cement.

Amaral is opposing the application because it believes there are more than enough carriers with sufficient equipment to meet the demand for transportation and the addition of more carriers would be detrimental to Amaral.

G. Rich Ladeira Trucking, Inc.

Mrs. Priscilla Ladeira, office manager and dispatcher of Ladeira, testified for her company. Ladeira has cement carrier authority to 25 counties including seven of the counties to which applicant seeks authority here, namely, Lake, Madera, Marin, Mariposa, Napa, San Benito, and Solano. ✓

Ladeira's headquarters is located in Antioch. Ladeira operates two tractors and two sets of pneumatic trailers for the transportation of bulk cement.

No financial information was provided as Ladeira was incorporated on October 1, 1983, and the witness testified that the books of the new corporation were being processed by the corporation's accountant.

Exhibit 21 shows an equipment use factor calculation for the years 1982 and January 1, 1983 through October of 1983. This showed that out of 249 possible working days in the first 10 months of 1983, the Ladeira operation worked only 169 days. This results in a 68% use factor for the period. Exhibit 22 sets forth a recapitulation of loads transported into the seven counties applied for here for which Ladeira has authority, from January 1983 through October 31, 1983. The exhibit shows a total of 92 loads as follows:

No shipments to Madera, Mariposa, or San Benito Counties; one shipment each to Lake and Napa Counties; eight shipments to Solano County; and 82 shipments to Marin County.

The Ladeira position was that it is a small carrier that could not take the competition likely from the applicant here. The involvement with Pacific was of great concern.

Commission Staff Position

The Commission staff (staff) did not present any direct evidence but it did participate in the hearing through cross examination of witnesses and the filing of a brief.

The staff's primary concerns in an application for new cement carrier authority or for an extension of existing cement carrier authority are:

- (1) Whether the applicant has sufficient equipment to conduct the proposed service,
- (2) Whether it has the financial ability to conduct the proposed service, and
- (3) Whether public convenience and necessity require the proposed service.

The staff brief states it is clearly indicated that applicant's equipment can accommodate the proposed expansion of operations. With respect to applicant's financial ability the staff questions applicant's account receivable from its affiliated company FTG in the amount of \$730,090. The staff is of the opinion that if the arrangement between the applicant and FTG is not at arm's length, and if the account receivable is, in effect, an undocumented loan with no interest and no compulsion for repayment, that account receivable should be discredited as an asset of the corporation.

With respect to whether public convenience and necessity require the proposed service the staff is of the opinion that the application should be denied since no evidence was offered by applicant or its supporting witnesses to show: (1) inadequacy of service by existing carriers and (2) that those carriers are not fulfilling their common carrier obligations. Furthermore, the 18 counties for which authority is requested appear to have an adequate number of carriers authorized to serve them. Exhibit 13 indicates such to be the case.

Discussion

This is an application for expansion of common carrier authority which requires that the Commission declare that public convenience and necessity require the expansion. (PU Code Section 1063.)

Four shippers testified in support of applicant's proposed service. One shipper, Lone Star describes applicant's services as very efficient and supports a grant of cement carrier authority to applicant for all counties requested. Another shipper, Pacific Ready Mix, stated that it supports the application and currently uses applicant as its sole carrier because of service, cooperation, control, record keeping and 24-hour accessibility. Clearly, applicant has made the showing of shipper support and thus of public convenience and necessity required by Resolution 18191 and by Section 1063.

We note that two of the supporting shippers, Kaiser and Pacific, project increases in the cement business in Northern California for 1984. Kaiser presented forecast data from the Portland Cement Association projecting a 12.9% increase in annual volume. Pacific projects a 15-20% increase in its ready mix sales.

The staff recommends denying the application because the applicant failed to provide evidence of the inadequacies of existing carriers and that those carriers are not fulfilling their common carrier obligations. Applicant is not required to make such a showing. Staff, by that argument, must be referring to PU Code Section 3623(c):

"Before a permit to operate as a cement contract carrier is issued, the commission shall require the applicant to establish by a preponderance of evidence:

. . .

(c) That the privilege sought:

- (1) Will not endanger the safety of the public or interfere with the public use of public highways or impair the condition or maintenance of them, directly or indirectly.
- (2) Will not unnecessarily burden the public highways.
- (3) Will not impair the ability of presently certificated cement carriers or permitted cement contract carriers to provide or to continue to provide adequate services as such, at the lowest possible reasonable rate.

But by its terms Section 3623 applies only to cement contract carriers and is thus not applicable here. Again, in this proceeding we are only presented with an application for expansion of an existing common carrier authority.

Similarly, allegations and arguments re the safety of the public and the use and condition of public highways are not applicable if such allegations rely upon Section 3623 as authority.

Some of the protestants charge that applicant is not fit and proper to receive the sought authority. Such charge is based upon the alleged transportation of cement to Lake County without authority, and upon Frank Alegre's alleged practice of allowing customers the use of the Maui condominium without charge. There is insufficient evidence in this proceeding with respect to the Lake County transportation and the Maui condominium to justify a finding that applicant is not a fit and proper person to receive a certificate. We make no findings regarding the specific allegations.

None of the protestants question the operational or financial ability of applicant; however, the staff questions whether the FIG receivable should be considered as an asset. Even if the FIG receivable were eliminated it would not diminish applicant's finances to the point that applicant would not have the financial ability to conduct the operation.

The concern and thus the argument that applicant will request and be granted additional rate reductions is not a matter that should be considered in this proceeding. There are procedures set forth for protests to the rate reduction application when filed.

Applicant in its brief requested official notice be taken of the Commission's annual report of January 1, 1984 concerning the number of cement certificates outstanding. Request for such notice should have been made at the hearing so that protestants would be aware of the request. The motion to strike the material will be granted.

We believe that the applicant has demonstrated that it is a fit carrier whose operations and customers will benefit from the expansion of his service territories. We will, therefore, grant the application. ✓

Findings of Fact

1. Applicant holds authority as a cement carrier which authorizes operations from any and all points of origin to any and all places in 24 counties.
2. Applicant here seeks to expand its cement carrier authority to 18 additional counties.
3. The application is protested by 8 other carriers, of which 7 presented evidence.
4. Protestants who presented evidence hold authority as set forth in Appendix B.
5. Applicant's primary customer is Pacific which desires that applicant provide all of its cement transportation needs.
6. Pacific is a large user of cement which is purchased from Kaiser and Lone Star.
7. Witnesses from 4 companies testified in support of the application. Two are manufacturers of cement and two are users of cement.
8. Applicant has met its burden of showing public need for expansion of its operating authority as required by PUC Code Section 1063.

Conclusions of Law

1. Public convenience and necessity require that applicant's authority be extended to the sought counties.
2. The motion of Universal to strike portions of applicant's brief should be granted.

ORDER

IT IS ORDERED that:

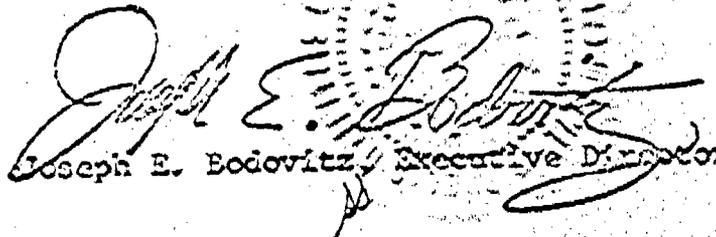
1. Application 83-06-33 is granted.
2. The motion of Universal Transport System filed April 5, 1984 is granted.

This order becomes effective 30 days from today.

Dated OCT 17 1984, at San Francisco, California.

VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Bodovitz, Executive Director

APPENDIX A

List of Appearances

Applicant: Edward J. Hegarty, Attorney at Law, for Frank C. Alegre Trucking, Inc.

Protestants: Daniel W. Baker, Attorney at Law, and George L. Roberts, for Universal Transport System, Inc.; Shirley L. Tibbs, for Bulk Transport, Inc.; Terry D. Fortier, Attorney at Law, for Commercial Transfer, Inc.; Silver, Rosen, Fischer and Stecher, by John Paul Fischer, Attorney at Law, for Raymond E. Skaggs; Les Calkins, for Les Calkins Trucking; Priscilla Ladeira, for Rich Ladeira Trucking Inc.; Joe Orlando, for CAP Transport, Inc.; Lloyd Amaral and John Dayak, for Amaral Trucking, Inc.

Interested Parties: Fred Covington and D. R. Redlingshafer, for themselves; Douglas J. Reynolds, for Kaiser Cement Corporation; and Woody Graham, for Miles & Sons Trucking Service, Inc.

Commission Staff: Diane I. Fellman, Attorney at Law, Dorothy Ligon, and Michael R. Flaherty.

(END OF APPENDIX A)

APPENDIX B

	<u>Protestants</u>						
	U n i v e r s a l	C a l i f o r n i a	S k a g s	C o m m e r c i a l	F o o t h i l l	A m a r a l	L a d e i r a
<u>Counties Applied For:</u>							
Butte	x	x	x	x	x	x	
Colusa	x	x	x	x			
Glenn	x	x	x		x	x	
Humboldt	x	x	x				
Kern	x	x		x	x	x	
Lake	x	x	x		x		x
Lassen	x	x	x				
Madera	x	x	x	x		x	x
Marin	x	x	x	x	x	x	x
Mariposa	x	x	x	x	x		x
Napa	x	x	x	x		x	x
San Benito	x	x	x	x		x	x
San Luis Obispo	x	x	x	x	x		
Santa Barbara	x	x			x	x	
Shasta	x	x	x	x	x	x	
Solano	x	x	x	x	x	x	x
Tehama	x	x	x	x			
Trinity	x	x	x				

x Indicates county to which protestant has cement carrier authority.

(END OF APPENDIX B)

the 1983 volume of cement transported in northern California increased 17.6 percent over the 1982 volume. A further 12.9% increase is projected for 1984. On cross-examination the witness presented Exhibit 10 which shows actual tonnage of cement shipped from 1977 through June 1983. The exhibit shows that during that period, 1982 was the lowest production year. The figure for 1983 in Exhibit 9 is approximately the same as the figure for 1981 in Exhibit 10 and the forecasted figure for 1984 in Exhibit 9 is approximately midway between the 1980 and 1981 figures in Exhibit 10.

2. Lone Star Industries

Robert J. Puppo appeared on behalf of Lone Star. He testified that Lone Star is a manufacturer of portland cement distributed to the 48 counties of northern California, which are bounded by the southern boundary of Kern County and the Oregon border. Its production facility is at Davenport, which is located approximately ten miles north of Santa Cruz, California. This facility has a rated capacity of 775,000 tons of cement production per year. This is a new production plant which was completed in 1980. It increased Lone Star's rated capacity of cement production from the prior 400,000 tons annually. In addition, Lone Star has two storage and distribution terminals, one located in Redwood City and one located in Sacramento. Lone Star has essentially the same policy as Kaiser with regard to proprietary information regarding sales and distribution volumes. Lone Star has its own equipment for the transportation of cement consisting of six tractors and six sets of trailers, two of which are pneumatic and four of which are gravity flow units.

Applicant provides bulk cement transportation directly for the account of Lone Star. These movements are from Davenport to the Lone Star storage and distribution terminals in Sacramento and Redwood City and from those facilities to Lone Star ready-mix plants in San Francisco and Sacramento. Applicant also transports bulk

Discussion

This is an application for common carrier authority which requires that the Commission declare that public convenience and necessity require the operation. (PU Code § 1063.)

In 1963 the Legislature established the cement carrier and cement contract carrier authorities. The cement carrier is a common carrier; the cement contract carrier is a permitted carrier. When it established these two classes of carriers the Legislature declared the transportation of cement to be a specialized type of transportation. (PU Code §§ 1068.1 and 3620.)

PU Code § 3623 sets forth specific requirements which must be met prior to the issuance of a cement contract carrier permit as follows:

"Before a permit to operate as a cement contract carrier is issued, the commission shall require the applicant to establish by a preponderance of evidence:

- (a) That he is a fit and proper person to receive a permit to operate as a cement contract carrier.
- (b) That he has sufficient operating and financial ability to initiate and continue the proposed operation.
- (c) That the privilege sought:
 - (1) Will not endanger the safety of the public or interfere with the public use of the public highways or impair the condition or maintenance of them, directly or indirectly.
 - (2) Will not unnecessarily burden the public highways.
 - (3) Will not impair the ability of presently certificated cement carriers or permitted cement contract carriers to provide or to continue to provide adequate services as such, at the lowest possible reasonable rates. . ."

A similar statute does not appear with respect to cement carriers. It is a well established principle that a common carrier is held to a higher standard than a permit carrier; therefore, the standards applicable to the cement contract carriers are the minimum applicable to the cement carrier.

It is alleged by some of the protestants that applicant is not fit and proper to receive the sought authority. The allegations are based upon the transportation of cement to Lake County without having authority and Frank Alegre's practice of allowing customers the use of the Maui condominium without charge. One of the protestants (Universal) requested that official notice be taken of any decision rendered in OII 83-05-01. (On October 3, 1984, D.84-10-033 was issued by the Commission, discontinuing OII 83-05-01.) There is insufficient evidence with respect to the Lake County transportation and the Maui condominium in this proceeding to find that applicant is not a fit and proper person to receive a certificate.

None of the protestants questions the operational or financial ability of applicant; however, the staff questions whether the FTG receivable should be considered as an asset. Even if the FTG receivable was eliminated it would not diminish applicant's finances to the point that it would not have the financial ability to conduct the operation.

There is some speculation but no evidence that the sought authority will endanger the safety of the public or interfere with the public use of the public highways or impact the condition of them directly or indirectly. Similarly there is speculation but no evidence that the sought authority will unnecessarily burden the public highways.

Whether the sought authority will impair the ability of presently certificated cement carriers or permitted cement contract carriers to provide or to continue to provide adequate services at the lowest possible reasonable rates goes hand in hand with whether or not public convenience and necessity require the proposed service.

Although witnesses representing four companies testified in support of the application, an analysis of the testimony of the public witnesses shows that support is for the most part connected with Pacific. There is no question that the primary reason that this application was filed is so that applicant can provide Pacific with all of its cement transportation needs.

The uncontroverted testimony of protestants discloses that all have a substantial amount of equipment available to handle additional cement transportation. Pacific's cement transportation needs to those counties for which applicant does not have authority have been adequately handled by other carriers.

Applicant contends that the evidence does not indicate that protestants transport any significant volume of cement to or within the counties requested, or that the shipments which are transported are likely to be diverted. There is no evidence that a significant volume of cement was destined to the involved counties. It may be that the entire amount transported by the protestant carriers was the total transported to the involved counties. Based on this assumption it may be that protestants indeed transported a significant volume to the involved counties.

One of the reasons the Legislature declared the transportation of cement to be a specialized type of transportation is because specialized equipment is used to perform the transportation. The pneumatic trailers used to transport bulk cement are some of the most expensive equipment in the transportation industry. Most of the protestants testified that their bulk cement equipment was not utilized to its full capability. We do not believe it proper to grant additional authority under these conditions. The grant of additional authority would be detrimental not only to the existing carriers but also to the public in that a further dilution of business from existing carriers would seriously impair their ability to provide the public with adequate service at the lowest possible reasonable rates.

The fear that applicant will request and be granted additional rate reductions is not a matter that should be considered in this application. There are procedures set forth for protests to the rate reduction application when filed.

Applicant in its brief requested official notice be taken of the Commission's annual report of January 1, 1984 concerning the number of cement certificates outstanding. Request for such notice should have been made at the hearing so that protestants would be aware of the request. The motion to strike the material will be granted.

Findings of Fact

1. Applicant holds authority as a cement carrier which authorizes operations from any and all points of origin to any and all places in 24 counties.
2. Applicant here seeks to expand its cement carrier authority to 18 additional counties.
3. The application is protested by 8 cement carriers, of which 7 presented evidence.
4. Protestants who presented evidence hold authority as set forth in Appendix B.
5. Applicant's primary customer is Pacific which desires that applicant provide all of its cement transportation needs.
6. Pacific is a very large user of cement which is purchased from Kaiser and Lone Star.
7. Pacific's transportation needs to those counties to which applicant does not have authority have been adequately handled by other carriers.
8. Protestants have a substantial amount of equipment available to handle additional transportation. Protestants' equipment is not fully utilized.
9. Official notice of the material which is the subject of Universal's motion to strike was not requested at the hearing.

Conclusions of Law

1. Public convenience and necessity do not require that applicant's authority be extended to the sought counties.
2. The application should be denied.
3. The motion of Universal to strike portions of applicant's brief should be granted.

O R D E R

IT IS ORDERED that:

1. Application 83-06-33 is denied.
2. The motion of Universal Transport System filed April 5, 1984 is granted.

This order becomes effective 30 days from today.

Dated OCT 17 1984, at San Francisco, California.

VICTOR CALVO
FRISCILLA C. GREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

Amaral presented financial statements for the period ended September 30, 1983. For the first nine months of 1983 its gross income totaled \$3,226,149, of which approximately 20% was attributable to the transportation of cement.

Amaral is opposing the application because it believes there are more than enough carriers with sufficient equipment to meet the demand for transportation and the addition of more carriers would be detrimental to Amaral.

G. Rich Ladeira Trucking, Inc.

Mrs. Prescilla Ladeira, office manager and dispatcher of Ladeira, testified for her company. Ladeira has cement carrier authority to 25 counties including seven of the counties to which applicant seeks authority here, namely, Lake, Madera, Marin, Mariposa, Napa, San Benito, and Solano.

Ladeira's headquarters is located in Antioch. Ladeira operates two tractors and two sets of pneumatic trailers for the transportation of bulk cement.

No financial information was provided as Ladeira was incorporated on October 1, 1983, and the witness testified that the books of the new corporation were being processed by the corporation's accountant.

Exhibit 21 shows an equipment use factor calculation for the years 1982 and January 1, 1983 through October of 1983. This showed that out of 249 possible working days in the first 10 months of 1983, the Ladeira operation worked only 169 days. This results in a 68% use factor for the period. Exhibit 22 sets forth a recapitulation of loads transported into the seven counties applied for here for which Ladeira has authority, from January 1983 through October 31, 1983. The exhibit shows a total of 92 loads as follows:

No shipments to Madera, Mariposa, or San Benito Counties; one shipment each to Lake and Napa Counties; eight shipments to Solano County; and 82 shipments to Marin County.

But by its terms Section 3623 applies only to cement contract carriers and is thus not applicable here. Again, in this proceeding we are only presented with an application for expansion of an existing common carrier authority.

Similarly, allegations and arguments re the safety of the public and the use and condition of public highways are not applicable if such allegations rely upon Section 3623 as authority.

Some of the protestants charge that applicant is not fit and proper to receive the sought authority. Such charge is based upon the alleged transportation of cement to Lake County without authority, and upon Frank Alegre's alleged practice of allowing customers the use of the Maui condominium without charge. There is insufficient evidence in this proceeding with respect to the Lake County transportation and the Maui condominium to justify a finding that applicant is not a fit and proper person to receive a certificate. We make no findings regarding the specific allegations.

None of the protestants question the operational or financial ability of applicant; however, the staff questions whether the FRG receivable should be considered as an asset. Even if the FRG receivable were eliminated it would not diminish applicant's finances to the point that applicant would not have the financial ability to conduct the operation.

The concern and thus the argument that applicant will request and be granted additional rate reductions is not a matter that should be considered in this proceeding. There are procedures set forth for protests to the rate reduction application when filed.

Applicant in its brief requested official notice be taken of the Commission's annual report of January 1, 1984 concerning the number of cement certificates outstanding. Request for such notice should have been made at the hearing so that protestants would be aware of the request. The motion to strike the material will be granted.

We believe that the applicant has demonstrated that ^{it} ~~he~~ is a fit carrier whose operations and customers will benefit from the expansion of his service territories. We will, therefore, grant the application. HS ✓