

ORIGINAL

Decision No. 34706

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
LILLIAN M. RAE, HARRY W. RAE, and )  
E. W. RAE, a co-partnership, doing ) Application No. 24440  
business as BISHER TRUCK LINE, for )  
clarification of operative rights. )

BY THE COMMISSION:

O P I N I O N

By this application Lillian M. Rae, Harry W. Rae and E. W. Rae, a co-partnership doing business as Bisher Truck Line, seek an order of the Commission clarifying operative rights of the applicant as a highway common carrier for the transportation of property between San Diego and Ramona and intermediate points. (1)

Applicant represents that by Decision No. 5915, of November 14, 1918, A. C. Bisher was authorized to operate as a highway common carrier between San Diego and Ramona and intermediate points subject to the condition that he obtain and file with the Commission appropriate permits from the city of San Diego and from the cities of East San Diego, El Cajon and La Mesa in

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(1) By Decision No. 5915, of November 14, 1918, in Application No. 4176, A. C. Bisher was authorized to operate an automobile truck line as a common carrier of freight between San Diego and Ramona and intermediate points, subject to certain conditions hereinafter described. By Decision No. 32203, of August 1, 1939, in Application No. 22874, A. C. Bisher was authorized to sell and transfer his operative right to E. W. Rae. Pursuant to Decision No. 32553, of November 14, 1939, E. W. Rae sold and transferred said operative right to the co-partnership of Lillian M. Rae, Harry W. Rae and E. W. Rae, applicants in the instant proceeding.

accordance with the provisions of Section 3 of Chapter 213, Statutes of 1917, and secure from this Commission a supplemental order reciting that said permits had been obtained and filed with the Commission. (2) Applicant further asserts that said permits were obtained and filed with the Commission but that the Commission did not thereafter make its supplemental order acknowledging the fulfillment of the condition attached to its original decision.

In conclusion, applicant alleges that in 1919 the California State Legislature repealed the law requiring highway common carriers to file local operative permits and that applicant and its predecessors have, ever since the granting of the original certificate to A. C. Bisher, operated thereunder in good faith and now seek an order clarifying said operative right.

The Commission's records disclose that the following permits were filed by A. C. Bisher pursuant to the condition attached to Decision No. 5915, supra:

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(2) Section 3, Chapter 213, Statutes of 1917, reads in part as follows:

"(a) No...person...shall operate any...auto truck ...for the transportation of...property as a common carrier...unless a permit has first been secured as herein provided.

"(b) Application for such permit shall be made by such...person...to the...governing board or body of each incorporated city or town... within or through which applicant intends to operate..."

Section 3 of Chapter 213, Statutes of 1917, was repealed by Section 5, Chapter 280, Statutes of 1919, making it unnecessary, thereafter, for motor carriers to secure permits from cities and municipalities for local operations within or through incorporated cities or towns.

<u>City</u>	<u>Date of Permit</u>	<u>Filed With Commission</u>
San Diego	November 9, 1918	January 17, 1919
East San Diego	January 2, 1919	January 17, 1919
La Mesa	February 14, 1919	April 21, 1919
El Cajon	December 2, 1918	February 24, 1919

and that appropriate tariffs and time schedules subsequently filed and as amended, are now on file with the Commission. It appears, however, that the Commission inadvertently, or because of the repeal of Section 3 of Chapter 213, Statutes of 1917, failed to issue the supplemental order authorizing applicant to perform the services it was certificated to render. Under the present provisions of the Public Utilities Act no supplemental authority would be necessary.

The San Diego Forwarding Company and the Southern California Freight Lines, the only other common carriers of property operating in competition with applicant, have advised the Commission in writing that they have no objection to the clarification of applicant's operative rights.

This is not a matter in which a public hearing is necessary. The Commission is of the opinion and finds that the application should be granted and that an in-lieu certificate of public convenience and necessity be issued to the applicant. (3)

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- (3) It will be unnecessary for the applicant to file new tariffs or time schedules pursuant to the order herein, inasmuch as no extension of service, new service, or change in present service is authorized herein.

O R D E R

Based upon the foregoing opinion and finding of the Commission,

IT IS ORDERED that an in-lieu certificate of public convenience and necessity be and it is hereby granted to Lillian M. Rae, Harry W. Rae and E. W. Rae, a co-partnership doing business as Bisher Truck Line, authorizing them to operate as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act, for the transportation of property between San Diego and Ramona and intermediate points, subject to the following condition:

Lillian M. Rae, Harry W. Rae and E. W. Rae, their successors or assigns, may never claim before this Commission, or any court or other public body, a value for the authority hereby granted in excess of the actual cost thereof.

IT IS FURTHER ORDERED that Bisher Truck Line shall comply with and observe the following service regulations:

1. File with the Commission a written acceptance of the foregoing certificate within thirty (30) days from the effective date of this order.
2. Subject to the right of the Commission to change such route at any future time, the services herein authorized shall be conducted over and along the following route:

Beginning at San Diego, via U. S. Highway No. 80 to El Cajon, thence via county road in a northerly direction from El Cajon via Santee and Lakeside to Ramona, and return over the same route in the reverse direction.

3. Applicant shall comply with and observe the provisions of the Commission's General Order No. 93-A insofar as they are applicable to the service herein authorized.

IT IS FURTHER ORDERED that the operative authority heretofore granted to applicant and its predecessors in interest by Decision No. 5915, of November 14, 1918; Decision No. 32203, of August 1, 1939; and Decision No. 32553, of November 14, 1939, be and it is hereby revoked and cancelled.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at Los Angeles, California, this 28<sup>th</sup> day of October, 1941.

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COMMISSIONERS