

ORIGINAL

Decision No. 62488

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of AZTEC TRANSPORTATION CO., INC., a Corporation, for an In Lieu Certificate of Public Convenience and Necessity to extend its highway common carrier certificate for the transportation of property.

Application No. 43325
(Filed April 17, 1961)

Donald Murchison, for applicant.
Harry W. Roe, for Bisher Truck Line, protestant.

O P I N I O N

This application was heard before Examiner Robert D. DeWolf at San Diego on June 27 and 28, 1961, and on June 28, 1961, it was submitted. Copies of the application and notice of hearing were served in accordance with the Commission's procedural rules.

The protestant is Harry W. Roe appearing for Bisher Truck Line.

Applicant is a highway common carrier and holds certain permits, and is presently transporting certain specified commodities within an area generally extending between San Diego, La Mesa, Chula Vista, Fallbrook and vicinity. Applicant requests authorization to extend such highway common carrier operations so as to transport general commodities, with the usual exceptions, to, from, and between all points and places located in San Diego County west of California State Highway No. 79.

Applicant is a party to Western Motor Tariff Bureau, Inc., Agent, Local Joint and Proportional Freight Tariff Nos. 18-B and 104, Cal. P.U.C. Nos. 17 and 7, J. L. Beeler, Agent Series.

Applicant's present authority is set forth in Decision No. 59245 dated November 10, 1959. Applicant's Exhibit No. 1 is a map of the western portion of San Diego County. Exhibit No. 2 is a balance sheet and profit and loss statement of applicant as of May 31, 1961. Exhibit No. 3 is a list showing sixteen trucks in use by applicant. Exhibit No. 4 is a list of applicant's seventeen employees. Exhibit No. 5 is a map of applicant's advertised routes. Exhibit No. 6 is a list of thirty-one shippers that applicant states have requested the extended service.

Applicant's president, manager, and accountant testified that there has been an increasing demand upon the applicant for the service herein proposed; that there has been a substantial increase in population and industry at the points and places it presently serves and proposes to serve; that applicant has enjoyed a steady growth of business in the territory for which authority is sought herein and is qualified and has the experience, equipment, personnel, and financial resources to institute and maintain the proposed service.

Eleven shipper witnesses testified that they have been using applicant's service and are very well satisfied, and that they need such increased service and will use it in the future. The applicant offered to procure the testimony of thirty additional

shipper witnesses but stated that he did not do so for the reason that the protestant, who has a limited territory to Poway and Ramona, did not examine any of the witnesses or offer any testimony, and then left the hearing soon after it started.

The shipper witnesses who testified, seven of whom were from San Diego and the others from El Cajon, La Mesa and National City, all stated that they had unsatisfactory service with other carriers involving slow pickup, delayed delivery, and refusal of service. The shippers testified they had used applicant's service from one to five years and required not less than overnight service; two shippers required early pickup and one twice-daily pickup, and that this was not available with other carriers.

The testimony shows competition in floor coverings, electrical products, oil lubricants, batteries, and tires. The shippers testified that same-day and overnight service is imperative, and four of the shippers stated that they do not now have trucks but would have to put on their own delivery trucks, if necessary, to get the service they desire.

A representative of the Peoples Fish Co. stated that two common carriers had refused to accept his product, that he requires an early-morning pickup, and that applicant has installed special racks in the trucks to take about 1,600 pounds a month.

All of the witnesses testified to increasing business activity in the western portion of San Diego County, and that applicant's present limited authority should be enlarged to include this area so as to give efficient service to each shipper.

Protestant appeared and made a brief statement that he was opposed to the application, but stated that he did not wish to offer any testimony or cross-examine any witnesses, and thereafter he left the hearing.

Findings and Conclusions

Upon consideration of the evidence the Commission finds and concludes as follows:

1. That applicant possesses the experience, equipment, personnel, and financial resources to institute and maintain the proposed service.

2. That public convenience and necessity require that the application be granted as set forth in the ensuing order.

Aztec Transportation Co., Inc., is hereby placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

An application having been filed, a public hearing having been held and based on the evidence therein adduced,

IT IS ORDERED:

1. That a certificate of public convenience and necessity be and it is granted to Aztec Transportation Co., Inc., a corporation, authorizing it to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, for the transportation of property between the points and over the routes as more particularly set forth in Appendices A and B attached hereto and hereby made a part hereof.

2. That in providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations:

- (a) Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted. By accepting the certificate of public convenience and necessity herein granted, applicant is placed on notice that it will be required, among other things, to file annual reports of its operations and to comply with and observe the safety rules and other regulations of the Commission's General Order No. 99 and insurance requirements of the Commission's General Order No. 100-B. Failure to file such reports, in such form and at such time as the Commission may direct, or to comply with and observe the provisions of General Orders Nos. 99 and 100-B, may result in a cancellation of the operating authority granted by this decision.
- (b) Within one hundred twenty days after the effective date hereof, and on not less than ten days' notice to the Commission and the public, applicant shall establish the service herein authorized and file in triplicate, and concurrently make effective, tariffs satisfactory to the Commission.

3. That the certificate of public convenience and necessity granted in paragraph 1 of this order supersedes the certificate

of public convenience and necessity authorizing the transportation of certain specified commodities heretofore acquired by Aztec Transportation Co., Inc., and presently possessed by it, which certificate is hereby revoked, said revocation to become effective concurrently with the effective date of the tariff filings required by paragraph 2(b) hereof.

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

Dated at San Francisco, California, this 29th day of August 1961.

W. H. Page

President

W. H. Page

President

S. J. Fox

Secretary

Fredrick B. Hallock

Commissioner

Aztec Transportation Co., Inc., a corporation, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport general commodities between all points and places in the San Diego Area as described in Appendix B attached hereto. Applicant shall not transport any shipments of:

1. Used household goods and personal effects not packed in accordance with the crated property requirements set forth in paragraph (d) of Item No. 10-C of Minimum Rate Tariff No. 4-A,
2. Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses and taxis; freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis.
3. Livestock, viz.: bucks, bulls, calves, cattle, cows, dairy cattle, ewes, goats, hogs, horses, kids, lambs, oxen, pigs, sheep, sheep camp outfits, sows, steers, stags or swine.
4. Commodities requiring protection from heat by the use of ice (either water or solidified carbon dioxide) or by mechanical refrigeration.
5. Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semi-trailers or a combination of such highway vehicles.
6. Commodities when transported in bulk in dump trucks or in hopper-type trucks.

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7. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
8. Logs.
9. Articles of extraordinary value as set forth in Rule 3 of Western Classification No. 77, J. P. Hackler, Tariff Publishing Officer, on the issue date thereof.
10. Commodities likely to contaminate or damage other freight.
11. Explosives as described in and subject to the regulations of Agent H. A. Campbell's Tariff No. 10.

End of Appendix A

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APPENDIX B TO DECISION NO. 62488

SAN DIEGO AREA includes that area embraced
by the following boundary:

Beginning at a point where the boundary line between San Diego and Orange Counties intersects the shore line of the Pacific Ocean, thence in a general easterly direction along said County boundary line to its intersection with State Highway No. 79, thence in a general southerly direction along said State Highway No. 79 to its intersection with State Highway No. 80, thence along an imaginary line due south to the International Border between the United States and Mexico, thence westerly along said International Border to the shore line of the Pacific Ocean, thence northerly along said shore line to the point of beginning.