

Decision No. 82793**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
Aztec Transportation Co., Inc.
for a Certificate of Public
Convenience and Necessity to operate
as a highway common carrier in
intrastate and interstate and
foreign commerce.

Application No. 54290
(Filed August 30, 1973)

O P I N I O N

Applicant is a California corporation whose articles of incorporation are dated September 24, 1959 and on file in File No. T-66840. It holds the following operating authorities: (1) permit to operate as a radial highway common carrier of general commodities within a 350-mile radius of San Diego, (2) permit to operate as a highway contract carrier of general commodities, statewide, (3) certificate of public convenience and necessity as a freight forwarder of general commodities granted by Decision No. 75388, and (4) certificate of public convenience and necessity as a highway common carrier of general commodities granted by Decisions Nos. 42586, 44845, 59684, 62488, 67654, and 74082, and (5) certificates of public convenience and necessity as a common carrier, by motor vehicle between points in California, from the Interstate Commerce Commission under file MC-120575.

Aztec Transportation Co., Inc. (Aztec) seeks, by this application, to extend its present certificate as a highway common carrier to serve, on a daily basis, five days a week, with "on call" service on Saturdays, those portions of Imperial Valley lying east of its present certificated area, including Calexico, as more particularly described in the application, and to provide an alternate route to its present authority to serve Borrego Springs. It requests that the Commission find that public convenience and necessity require the certificate extension for intrastate as well as interstate and foreign commerce.

Notice of this application was published in the Commission's Daily Calendar on September 5, 1973 and in the Federal Register on January 16, 1974. No protests have been received.

Applicant's evidence consists of a notarized letter dated January 31, 1974 from its president and 14 notarized statements of various shippers and carriers. The letter will be received as Exhibit 1 and the statements of shippers and carriers will be received as Exhibit 2. The Commission's Finance and Accounts staff submitted a report of its investigation of the books of account and records of Aztec, which will be received as Exhibit 3.

It is alleged in the application that Aztec has operated between the San Diego area and Borrego Springs and Tecate areas for many years handling commodities in intrastate, interstate, and foreign commerce; and that it has received numerous requests to establish service to the east, on a daily basis, from both shippers and carriers. Service to and from the area sought to be certificated is performed under permitted authority. This service has grown to a daily basis and can no longer be performed lawfully under the permitted authorities.

Aztec alleges that it has the financial ability to provide and render the proposed service; that its present equipment is sufficient; and that, as more equipment is required, it can and will provide the necessary equipment. Proposed rates are to be on the same level as those contained in Minimum Rate Tariff 2 and such other minimum rate tariffs as may be applicable.

Projections for the year 1974 show that the addition of the extended operating rights will generate an additional \$41,600 in annual revenue; that operating expenses, without the extension, will amount to approximately \$200,000; and that the increased expenses from the extension will amount to 15 percent, or \$30,000, resulting in a profit of \$11,600 on the total operations.

Exhibit 2 shows that Aztec's services are being used and that the shippers desire to use Aztec, on a daily basis, for shipments to and from the territory in Imperial Valley east of its present operating authority for intrastate, interstate, and foreign commerce. One of the carriers supporting the application is a freight

forwarder which states that its San Diego office is responsible for the Imperial Valley area and that it needs an I.C.C. surface carrier to service its customers in that area. The other carrier is a trucker who has had numerous requests from its customers for service into the San Diego-Imperial Valley area which it cannot handle except by interlining with Aztec.

Exhibit 3 shows that applicant has been faced with many financial hardships during its years of operations caused mainly by unprofitable prior management; that Mr. Reid C. Necker, as the new president, supervises operations and performs all the accounting functions; and that his experience in transportation and as a certified public accountant should enable the company to operate successfully. The equipment and facilities of Aztec consist of four 1972 and 1973 Dodge panel trucks, one Chevrolet tractor, four trailers, and eight active and two inactive bobtail trucks. The current maintenance program, which contemplates a complete overhaul of the existing equipment, should produce a fleet of trucks in excellent operating condition. Aztec is presently operating as a contract carrier in the area sought to be certificated, and the proposed routes sought should allow Aztec to operate at a higher level of efficiency, affording the opportunity to maximize the use of equipment. The terminal, which includes storage and office facilities, is located at 2548 Commercial Street in San Diego. The lot and building are leased. Maintenance is performed by an independent garage. Aztec's accounting records are maintained in full compliance with the Uniform System of Accounts. The financial staff points out that Aztec's present financial condition is not strong; that its past operations are reflected in an operating deficit equal to nearly half its present total assets, about three times its initial capital stock; and that Aztec has an additional liability, not reflected in the balance sheet, of \$27,000 which represents the remaining amount payable, at the rate of \$1,000

per month, of \$50,000 under a retirement agreement with the former president and only shareholder at the time. The income statement for the six months ended June 30, 1973 shows a net income of \$3,217.38. The financial staff makes no recommendation with respect to the sought extension of operating authority.

The Transportation Division staff filed an Advice of Participation received as Exhibit 4 which states that participation by the Transportation Division does not appear necessary and none is planned. However, this "advice" states that the present authority of Aztec excludes explosives, refrigerated commodities, cement, logs, articles of extraordinary value, and commodities likely to contaminate other freight, but the authority proposed does not. It also points out that if the authority is granted, as requested, it will result in some duplications with the carrier's current operating authority. It does not point out where the duplication would exist.

Exhibit 1 contains a statement that Mr. and Mrs. Necker's personal finances are such that they can adequately finance any extension and increase in operations. Since there is a negative stockholders' equity of \$17,187.04 as of June 30, 1973, it is apparent from the present financial condition of Aztec, that there is a possibility further funds will have to be advanced by the shareholders even if the projections of 1974 operations are realized. Although the operations are marginal, they have apparently not been a losing proposition. We are of the opinion that the extension will provide the opportunity for increased profitability through the more efficient utilization of equipment, new management exercising tighter controls, and the demonstrated need for the extended service.

After careful consideration of the record, we find that applicant possesses the necessary equipment, experience, and financial ability to conduct the proposed service, and that public convenience and necessity require that applicant be authorized to extend its

present operating authority to engage in operations in intrastate commerce, (without duplicating any of its present routes and limited to commodities presently authorized) and also require that applicant be authorized to engage in operations in interstate and foreign commerce within limits which do not exceed the scope of the intrastate operations authorized by this decision. The Commission further finds with reasonable certainty that the project involved in this proceeding will not have a significant effect on the environment. A public hearing is not necessary.

The Commission concludes that the application should be granted as set forth in the ensuing order. Applicant's operating authority will be restated in the form of a new certificate. Such restatement will not broaden the authority nor exceed the scope of the proposed operation as published in the Federal Register.

Aztec Transportation Co., Inc. is 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. 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

IT IS ORDERED that:

1. A certificate of public convenience and necessity 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, between the territory and points and over the routes set forth in Appendix A, attached hereto and made a part hereof.
2. In providing service pursuant to the authority granted by this order, applicant shall comply with the following service regulations. Failure so to do may result in cancellation of the authority.

- (a) Within thirty days after the effective date of this order, applicant shall file a written acceptance of the certificate granted. Applicant is placed on notice that if it accepts the certificate it will be required, among other things, to comply with the safety rules of the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-Series.
- (b) Within one hundred twenty days after the effective date of this order, applicant shall establish the authorized service and amend or file tariffs, in triplicate, in the Commission's office.
- (c) The tariff filings shall be made effective not earlier than thirty days after the effective date of this order on not less than thirty days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the establishment of the authorized service.
- (d) The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80-Series.
- (e) Applicant shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.
- (f) Applicant shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If applicant elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

3. The certificate of public convenience and necessity granted in paragraph 1 of this order shall supersede the certificates of

public convenience and necessity granted by Decisions Nos. 42586, 44845, 59684, 62488, 67654, and 74082, which certificates are revoked effective concurrently with the effective date of the tariff filings required by paragraph 2(b).

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

Dated at San Francisco, California, this 30th day of APRIL, 1974.

William L. Sturgeon President
Vernon L. Sturgeon
William L. Sturgeon
William L. Sturgeon
Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

Aztec Transportation Co., Inc., by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to conduct operations as a highway common carrier as defined in Section 213 of the Public Utilities Code for the transportation of general commodities as follows:

- I. Between the City of San Diego, on the one hand, and points and places within Borrego Valley, on the other hand.
- II. Between all points and places in the San Diego Area as described in Note A.
- III. Between:
 1. All points and places within the San Diego Territory, as described in Note B, on the one hand, and all points and places on or within ten miles of the following highways between Borrego Springs and Calexico, on the other hand:
 - a. County road S-3 between Borrego and its junction with State Highway 78.
 - b. State Highway 78 between its intersection with county road S-3 and its junction with State Highway 86, at Kane Spring.
 - c. State Highway 86 between its junction with State Highway 78 at Kane Spring, and Brawley.
 - d. State Highway 111 between Brawley and Calexico.
 - e. Alternate route: State Highway 79 between Santa Ysabel and its intersection with county road S-22, and county road S-22 between its junction with State Highway 79 and Borrego Springs.

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2. Calexico and Tecate along State Highway 98 to the junction of Interstate Highway 8, near Ocotillo; thence via Interstate Highway 8 to its junction with State Highway 94, at Boulevard; and via State Highway 94 to its junction with Tecate Road, and all points within ten miles of said highways.

IV. Duplications which occur in describing the operating rights herein, are not to be construed as granting more than one certificated authority to transport the same commodities between the same points.

Except that pursuant to the authority herein granted carrier shall not transport any shipments of:

1. Used household goods, personal effects and office, store and institution furniture, fixtures and equipment not packed in accordance with the crated property requirements set forth in Item 5 of Minimum Rate Tariff 4-B.
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.: barrows, boars, bulls, butcher hogs, calves, cattle, cows, dairy cattle, ewes, feeder pigs, gilts, goats, heifers, hogs, kids, lambs, oxen, pigs, rams (bucks), sheep, sheep camp outfits, sows, steers, stags, swine or wethers.
4. Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles.

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5. Commodities when transported in bulk in dump trucks or in hopper-type trucks.
6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
7. Logs.
8. Articles of extraordinary value.
9. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.
10. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
11. Commodities likely to contaminate or damage other freight.
12. Explosives and dangerous articles.

NOTE A

THE SAN DIEGO AREA

The 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 shoreline of the Pacific Ocean, thence in a general easterly direction along said County boundary line to its intersection with State Highway 79, thence southerly along State Highway 79 to its intersection with Interstate Highway 8, thence due south along an imaginary line to the International Border between the United States and Mexico, thence westerly along said International Border to the shoreline of the Pacific Ocean, thence northerly along said shoreline to the point of beginning.

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NOTE B

SAN DIEGO TERRITORY

The San Diego Territory includes that area embraced by following an imaginary line starting at a point approximately four miles north of La Jolla on the Pacific Coast shoreline running east to Miramar on U.S. Highway 395; thence following an imaginary line running southeasterly to Lakeside on State Highway 67; thence southerly on County Road S 17 (San Diego County) and its prolongation to State Highway 94; easterly on State Highway 94 to Jamul; thence due south following an imaginary line to the California-Mexico Boundary Line; thence westerly along the boundary line to the Pacific Ocean and north along the shoreline to point of beginning.

(END OF APPENDIX A)

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