

Decision No. 83839

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of DONALD H. FRITZGES, doing
business as GOLDEN CHARIOT TRUCK
LINE, for a certificate of public
convenience and necessity to
operate as a highway common carrier
for the transportation of property
in intrastate and interstate and
foreign commerce.

Application No. 54119
(Filed June 21, 1973)

Donald Murchison, Attorney at Law,
for applicant.
Russell & Schureman, by Robert
Schureman, Attorney at Law, for
Aztec Transportation Co., Inc. and
Harding's Freight Service; Joseph
A. Sciarretta, Attorney at Law, for
Bisner Truck Line, Inc.; and
Rodney R. Starkey, for Pacific
Messenger Service, Inc.; protestants.

O P I N I O N

Donald H. Fritzges, doing business as Golden Chariot Truck Line, presently operating as a permitted carrier seeks a certificate of public convenience and necessity to operate as a highway common carrier:

- (1) Between all points and places within the San Diego Territory, on the one hand, and Borrego Springs, on the other hand, serving all intermediate points on Interstate Highway 15, County Road S-4, State Highways 67, 78, and 79, and County Roads S-3 and S-22, and all points within 10 miles of said highways.

- (2) Between the San Diego Territory, on the one hand, and Campo, on the other hand, serving all intermediate points on State Highway 94, and all points within 10 miles of said highway.

No local service is to be performed between points located within the San Diego Territory. Copies of the application were served upon 79 carriers with which the proposed service might compete as well as the California Trucking Association, with appropriate notice filed in the Federal Register on July 19, 1973.

The application was protested by Harding's Freight Service (Harding), Aztec Transportation Co., Inc. (Aztec), Bisher Truck Line, Inc. (Bisher), and Pacific Messenger Service, Inc. (Pacific). Pacific withdrew its protest when the proposed certificate was amended on the first day of hearing to provide that there would be no local service between points and places within the San Diego Territory.

Public hearing was held before Examiner Banks at Warner Springs on October 17 and 18, 1973 and at San Diego on January 8 and April 17, 1974 at which time the matter was submitted.

Applicant commenced operations as a permitted carrier in 1962. It operated as a subhauler for protestant Aztec from 1964 to May 1973. Applicant leases terminal facilities in San Diego. It owns one piece of equipment and leases another. As of September 30, 1973 applicant indicated assets of \$10,688 with a net worth of \$3,933. Gross operating revenues have increased from \$7,500 in 1962 to \$33,869 for the first nine months of 1973.

Applicant presently makes a run to Borrego on Monday, Wednesday, and Friday and to the Campo area on Tuesday and Thursday.

Applicant proposes to provide overnight service on an "on-call" basis Monday through Friday except Saturday, Sunday, and holidays, with Saturday service provided on request. It proposes rates similar to those contained in Minimum Rate Tariff 2.

Applicant alleges there has been an increasing demand for daily service from shippers; that as a permitted carrier he cannot

provide such service; that he has the necessary experience, equipment, facilities, and financial ability to perform the proposed service; and that because of the increase in frequency of traffic into the proposed area the service should be certificated.

Thirteen public witnesses testified on behalf of the applicant. Their testimony is summarized as follows:

1. Dwight W. Davis, Borrego Springs, president of Leisure Lifestyle Corporation. Deals in marketing of mobile homes and selling allied products and services in the Borrego Springs area. This would include but not limited to furniture, awnings, carpets, drapes, appliances, etc. Has used applicant since the applicant terminated his association with Aztec. Has used both Aztec and Bisher but because of poor service supports applicant. The same testimony was given on behalf of the Board of Directors of Borrego Springs Shopping Center, Inc. and Borrego Mobile Parks Co., wholly owned by the Di Giorgio Development Co.
2. Thomas A. Aguer, Borrego Springs, president of de Anza Pharmacy. Retail establishment dealing in drugs, gifts, and sundries. Receives intrastate shipments from Los Angeles and/or San Diego one to two times a week. Occasionally receives interstate shipments. Makes no out-bound shipments. Specifies applicant whenever possible.
3. Robert L. Bane, Ramona, superintendent of Ramona Mining & Manufacturing. Deals in tumbled semiprecious gemstones. Receives 2 to 3 inbound shipments per week ranging in weight from 50 to 20,000 pounds. Has one intrastate and 2 to 3 interstate outbound shipments per week ranging from 3 to 500 pounds. Uses protestant Aztec for interstate outbound shipment but states the pickup service and proof of delivery are poor. Would prefer to use applicant for all shipments.

4. Francis Starr Julian, proprietor of the Julian Hardware & Variety Store. A general store dealing in retail merchandise from hardware to children and infants' ware. Receives four intrastate shipments per week ranging from 100 to 2,000 pounds. Stated he liked the applicant and would use his services but was not dissatisfied with protestants' service.
5. Cavanaugh R. Townsend, Borrego Springs, partner with his wife in Borrego Hardware. Retail establishment handling general hardware merchandise. Receives an average of 8 truck shipments per month. Acquainted with applicant through his association with Aztec. Would use applicant whenever there is an opportunity to specify a carrier. Makes no outbound shipments.
6. Deas Mac Farlane, Borrego Springs, owner of De Anza Home & Patio. Deals in paint, patio furniture, lamps, lumber, hobby items, etc. Receives an average of 2 to 3 truck shipments per month. Has no outbound freight. Applicant handles approximately 25 percent of his freight. Would specify applicant if authorization is approved.
7. David L. Marks, Borrego Springs, owner of the Village Trading Post. Retail establishment carrying general merchandise. Receives approximately 2 shipments per week from Los Angeles via San Diego ranging in weight from 200 to 600 pounds. Has no outbound freight. Received one shipment from protestant Harding but would not specify Harding because the driver stated that deliveries are only made when a full truck of goods has been accumulated or approximately once a month. Used protestant Aztec when applicant was a subhauler and found the service satisfactory. Now specifies applicant and would continue to do so if the application is approved.

8. John C. Rugh, Borrego Springs, facilities manager for Di Giorgio Development Corporation. Corporation operates the Borrego Shopping Center. The shopping center mall consists of 35 locations of which 10 are owned and operated by the Di Giorgio Corporation. Is in receipt of shipments daily from October through May weighing from 50 to 200 pounds. Makes no outbound shipments. Used Aztec when applicant was a subhauler and would prefer to use applicant because of the service rendered in the past and because applicant solicits his business.
9. Jerry Goodwill, Montebello, president and general manager of G & H Transportation, Inc. G & H is a common carrier of general commodities with CPUC and ICC authority for the L. A. Basin and the San Diego Territory. Presently has 6 to 8 intrastate shipments per week to the Borrego area averaging 300 pounds per shipment and 7 to 10 shipments per week to the Campo area averaging 300 to 400 pounds per shipment. The intrastate shipments are turned over to applicant in San Diego. Has approximately 8 to 10 interstate shipments per week to the Borrego area averaging 200 to 300 pounds and 10 to 15 per week to the Campo area averaging 300 to 400 pounds. This freight is presently turned over to Aztec in San Diego. Stated he had problems with Aztec on division of revenues for northbound traffic and with C.O.D. shipments. Ceased intrastate interlining with Aztec in January 1972. Began using applicant in May 1973. Very pleased with applicant's service. Would use applicant for interstate as well as intrastate traffic if the application is approved.
10. Ralph Scarno, Tecate, president of Temple Industries, Inc. Manufactures electronic parts and distributes similar electronic material manufactured in foreign countries. Has an average of 57 intrastate outbound shipments per month each weighing approximately 300 pounds. Receives an average of 25 intrastate inbound shipments per month averaging 700 each. The

majority of inbound and outbound shipments originate or terminate in Los Angeles or the San Francisco Bay area by way of San Diego. Indicated he has had problems with delivery service of Aztec. Has some interstate shipments moving to the Los Angeles or San Francisco Bay area. Uses applicant for intrastate movement and would use applicant for most, if not all, shipments if application is approved. Has approximately 200 outbound interstate shipments per month averaging 125 pounds each and approximately 40 inbound interstate shipments per month averaging 1,000 pounds each which the applicant cannot handle.

11. Thomas L. Manos, Jamul. In the well drilling and pump service business. Receives 4 to 6 shipments per month ranging from 500 to 2,000 pounds. Has used Delta Lines but very unhappy because it makes only one delivery per week and that on occasion a shipment may take a week to get from San Diego to Jamul. Would use applicant for all shipments if the application is approved.
12. Kenneth Bendle, San Diego, traffic manager for Smiser Freight Service. Smiser is a common carrier with extensive authority. Has daily intrastate shipments moving from Los Angeles through San Diego to the Borrego Springs area. Does not interline interstate traffic out of the San Diego terminal due to the uncertainty of service. Turns intrastate traffic destined to areas Smiser does not serve to applicant for delivery. Does turn certain freight to protestant Harding. Supports the application and would use applicant for intrastate as well as interstate shipments if the application is approved.
13. Gordon Hammers, Tecate, vice president of Muir Industries of Tecate. Manufacturer of electronic components. Has approximately 8 intrastate shipments per week destined for the Los Angeles or the Bay Area weighing approximately 200 pounds each. Has approximately the same

number of intrastate inbound shipments. Receives about 6,000 pounds of interstate shipments per month. States that the present service is unsatisfactory in that carriers are not operating on a daily basis which requires his having to run a pickup truck or station wagon to San Diego to pick up freight. Has had service and billing problems with protestant Aztec. Would use applicant for both interstate and intrastate shipments if the application is approved.

Protestants' Presentation

Evidence in support of their protests was introduced by Aztec, Harding, and Bisher.

Harding is authorized to provide service as a common carrier to all points in San Diego County and between San Diego and Devore, serving intermediate points off State Highway 15. It holds corresponding interstate authority. Harding maintains a terminal in Escondido and a subterminal in San Diego. It owns or leases and operates 22 pieces of equipment.

Harding contends that there is not enough business to sustain three carriers into the proposed area and to issue a certificate would allow unlimited solicitation of traffic and to move that traffic on a five-day-a-week basis. According to Exhibits 15 and 16 a high percentage of the traffic is interline traffic, all of which would become subject to immediate diversion by the applicant.

Aztec is authorized to transport general commodities as a common carrier in the San Diego area. It holds corresponding ICC authority. It maintains a terminal in San Diego.

It is Aztec's position that the applicant was an exclusive subhauler for Aztec for a period of some 10 years and that the subhaul agreement was terminated when it was discovered that the applicant, in addition to hauling Aztec's freight, also was hauling

freight for Smiser and C & H Trucking. That upon such discovery the applicant's subhaul agreement was terminated at which time the applicant undertook to divert all of Aztec's traffic and thus overnight became a regular route operation in violation of the highway common carrier statutes.

Bisher presented no evidence but filed its CPUC and ICC operating authority.

Discussion

Applicant is not a new carrier seeking to serve a new area. Rather, he has been providing service to the area under a permit issued by this Commission for many years. Testimony of the public witnesses in support of the application illustrates that they wish to use applicant's proposed service for one or more of the following reasons: (1) missed and/or late pickups, (2) delays in transit, (3) refusal to make pickups, (4) lost shipments, (5) delivery failures, (6) claims and settlement problems, and (7) satisfaction with applicant.

While the protestants contend that the granting of the application will divert traffic in an area where the present traffic is insufficient to sustain existing carriers and thus have an adverse effect upon their operations, the record discloses that, with the termination of the subhaul agreement, the applicant has operated as a permitted carrier in response to requests from customers. Thus, competition will continue without regard to how this matter is decided. To this extent it is an established operation filling a present need.

Findings

1. Applicant is a permitted carrier operating in the San Diego Territory.

2. Pursuant to its permitted authority and in response to customer requests it has been providing service to the Borrego and Campo areas. It seeks authority to extend its services as a

certificated carrier to those points;

3. Applicant possesses the necessary equipment, facilities, experience, and financial ability to provide the proposed service.

4. A number of applicant's customers desire to use applicant's proposed service on shipments moving in intrastate and interstate commerce having expressed dissatisfaction with the services of the existing certificated carriers.

5. The dissatisfaction expressed by applicant's customers with the existing certificated carriers is based upon missed and late pickups, damages to shipments, and delays in transit.

6. In addition to applicant, who has been serving the proposed area pursuant to its permit, the area is also being served by other permitted carriers. Any alteration of the competitive picture affecting the existing certificated carriers is outweighed by the need for improved service.

7. Public convenience and necessity require that applicant be authorized to engage in operations in intrastate commerce as proposed in the application, as amended, 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 the order herein.

8. The Commission finds with reasonable certainty that the project involved in this proceeding will not have a significant effect on the environment.

Conclusion

The Commission concludes that the application, as amended, should be granted as set forth in the ensuing order. The territorial description or routes of the authority granted reflect the names of redesignated highways and roads and do not in any way exceed the geographical scope of the proposed operation as published in the Federal Register.

Applicant 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 Donald H. Fritzges, authorizing him to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points 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 he accepts the certificate he will be required, among other things, to comply with the safety rules administered by 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 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 his 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 his 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, he shall make the appropriate tariff filings as required by the General Order.

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

Dated at San Francisco, California, this 17th day of DECEMBER, 1974.

I dissent :

[Signature], Commissioner

Vernon L. Stenger
President
William J. [Signature]
[Signature]

Robert E. McLaughlin
Commissioners

Donald H. Fritzges, 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:

1. BETWEEN all points and places in the San Diego Territory, as described in Note A, and Borrego Springs, serving all intermediate points on Interstate Highway 15, County Road S-4, State Highways 67, 78, and 79, and County Roads S-3 and S-22, and all points within 10 miles of said highways.
2. BETWEEN the San Diego Territory, and Campo, serving all intermediate points on State Highway 94, and all points within 10 miles of said highways.
3. RESTRICTION: No local service is authorized between points in the San Diego Territory.

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 salesmen's hand sample cases, suitcases, overnight or boston bags, brief cases, hat boxes, valises, traveling bags, trunks, lift vans, barrels, boxes, cartons, crates, cases, baskets, pails, kits, tubs, drums, bags (jute, cotton, burlap or gunny) or bundles (completely wrapped in jute, cotton, burlap, gunny, fibreboard, or straw matting).

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Decision No. 83839, Application No. 54119.

DONALD H. FRITZGES
(an individual)
DOING BUSINESS AS
GOLDEN CHARIOT TRUCK LINE

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.
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. Portland or similar cements, in bulk or packages, when loaded substantially to capacity of motor vehicle.
8. Logs.
9. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.

Issued by California Public Utilities Commission.

Decision No. 83839, Application No. 54119.

10. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
11. Explosives subject to U.S. Department of Transportation Regulations governing the Transportation of Hazardous Materials.
12. Commodities of abnormal size or weight, which because of such size or weight, require the use of and are transported on low-bed equipment.

NOTE A

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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